

PURCHASE ORDER TERMS & CONDITIONS

These Purchase Order Terms & Conditions ("Terms and Conditions") govern the attached order ("Order(s)") placed by Fairchild Imaging, Inc. ("Fairchild Imaging") to the supplier selling Products and/or Services to Fairchild Imaging ("Supplier").

1. **Purpose of these Terms and Conditions.** Fairchild Imaging desires Supplier to provide a product(s) ("Product") or a service(s) ("Service") pursuant to either quotations provided by Supplier or under an applicable mutually agreed-upon document.
2. **Order Conditional on Acceptance of these Terms and Conditions.** Notwithstanding any prior dealings between Fairchild Imaging and Supplier, the respective Order is expressly made conditional on, and Fairchild Imaging expressly limits Supplier's provision of any Products or Services set forth in the Order, to these Terms and Conditions.
3. **Supplier Agrees to these Terms and Conditions.** Any of the following acts shall constitute acceptance by Supplier of the Order and these Terms and Conditions below: (i) signing and returning a copy of the Order; (ii) delivering any of the Products ordered or commencing the Services ordered; (iii) informing Fairchild Imaging in any manner of commencement of performance; (iv) the products supplier's order acknowledgement; and (v) accepting payment from Fairchild Imaging for the items ordered. Supplier acknowledges that Supplier has read, understands, and agrees to be bound by these Terms and Conditions. If Supplier objects to any item in these Terms and Conditions, Supplier shall (i) notify Fairchild Imaging in writing within three days after its receipt of the Order and (ii) withhold acceptance of the Order and not start any performance, ship any Products, or furnish any Services (or provide any deliverable) in connection with the Order until/unless such objection is settled in writing signed by Fairchild Imaging and Supplier.
4. **Terms and Conditions Specific to Order.** These Terms and Conditions and all other documents referred to or incorporated herein or located online are specific to the Order and may be amended from time to time by Fairchild Imaging. The applicable Terms and Conditions shall be those valid as of the date of the Order. Supplier should read the Terms and Conditions applicable to each subsequently issued Order that Supplier receives because by accepting such Order and/or starting performance, shipping any Products, or furnishing any Services (or providing any deliverable arising therefrom) after a revised version of the Terms and Conditions has been posted or included, Supplier will be deemed to have accepted the revised version.
5. **Entire Agreement.** These Terms and Conditions supersede all prior discussions and writings with respect to the subject matter and constitutes the entire agreement between the Parties with respect to the subject matter. No term or condition, including Supplier's bid proposal or order acknowledgement, or any other terms or terms included in or with any provided licensed software, may change, vary, or supplement the Order or these Terms and Conditions unless Fairchild Imaging specifically agrees to the different or supplemental terms in a signed writing of a subsequent date or on the non-pre-printed terms in Fairchild Imaging's order. If Supplier rejects or amends these Terms and Conditions, the Order may be deemed cancelled by Fairchild Imaging without any further obligation or restriction of its rights and options. These Terms and Conditions shall survive fulfillment and/or termination of the Order.
6. **Transaction under the Order.** Supplier shall sell to Fairchild Imaging the Products shown on the Order at the prices shown on the Order. Supplier shall comply with the quantity and delivery requirements of the Order. The Products shall comply with any applicable specifications, drawings, samples, descriptions, or any other similar criteria proffered by Supplier or required by the Order ("Specifications"). Fairchild Imaging shall not be bound by any forecasts or other information it may provide to Supplier, and any expenditures or commitments by Supplier in anticipation of Fairchild Imaging's requirements shall be at Supplier's sole risk and expense.
7. **Order Changes.**
- 7.1. Fairchild Imaging may at any time by written notice make changes to the Order in any one or more of the following circumstances:
 - 7.1.1. Delivery schedule and/or time of Service performance;
 - 7.1.2. The quantity of Products;
 - 7.1.3. Place of performance of the Services;
 - 7.1.4. The place of inspection, delivery, or acceptance; and/or
 - 7.1.5. Method of shipment or packing.
- 7.2. If any such change causes an increase or a decrease in the cost of, or the time required for, performance of any part of the Order, Fairchild Imaging shall make an equitable adjustment to the price and/or delivery schedule. Changes to the delivery schedule shall be subject to a price adjustment. Supplier must assert its right to an equitable adjustment under this Section within ten (10) days from the date of receipt of the written change order.
- 7.3. Supplier shall not substitute other products or materials for those specified in the Order without Fairchild Imaging's prior written consent.
8. **Shipment, Delivery, Title, and Risk of Loss.**
- 8.1. **Timely Basis.** Fairchild Imaging placed the Order based upon the representation by Supplier that it would ship and deliver the Products and/or perform the Services on a timely basis. Supplier shall notify Fairchild Imaging promptly if it has reason to believe that it may not be able to meet one or more delivery or performance dates. The notification does not excuse Supplier from the late delivery or performance; rather, it is intended to give Fairchild Imaging and Supplier an opportunity to work together to resolve the problems. Upon Supplier's notification to Fairchild Imaging of late delivery, Fairchild Imaging may elect to expedite shipment of the Product(s) affected by the delayed delivery so as to minimize costs incurred by Fairchild Imaging as a result of the late delivery. If Supplier had previously agreed to the delivery date, then Fairchild Imaging may opt to bill Supplier or take a credit for the difference between the original shipping fee and the cost for the expedited shipping service. This alternative is in addition to any other available relief or remedy to which Fairchild Imaging may be entitled.
- 8.2. **Shipping and Delivery.** Supplier must ship all Product according to Fairchild Imaging's instructions set forth in the Order, and if none are provided, then according to good commercial practice to ensure timely arrival of the Product at the named destination and by the time specified in the Order and according to any other instructions Fairchild Imaging may give to Supplier. Delivery shall be Incoterms 2020 DDP. Supplier will bear all other costs for shipping and delivery, including packing, handling, pre-delivery warehouse storage, and insurance, except where both Parties agree otherwise in writing. Supplier will pay any cost increase for Product shipped other than as specified in the Order. Supplier will pay the shipping costs for returns of any Product damaged in transit, damaged at delivery, or not accepted because the Product is not in compliance with the Order.
- 8.3. **Packaging.** Supplier will package all Product according to Fairchild Imaging's instructions set forth in the Order, and if none are provided, then according to good commercial practice to ensure safe arrival of the Product at the named destination. Supplier will be responsible for any loss or damage resulting from its failure to properly preserve, package, handle, or otherwise secure the Product for shipping. Supplier will mark all containers with necessary lifting, handling, and shipping information along with Order numbers, date of shipment, and the names of the consignee and consignor.
- 8.4. **Installation.** If Supplier provides implementation, installation, or other services for the Product, then title and risk of loss will pass to Fairchild Imaging upon the successful completion of such services.
- 8.5. The shipping documents must state the exact description of the Products, the gross and net weight, and the type of packaging. The shipping documents must include delivery notes, packing slips, certificates of conformance, and an itemized packing list (including, but not limited to, description, part number, revision level, and unit quantity of the Product shipped, and Order number, as applicable).
9. **Prices.**
- 9.1. Prices shall be fixed at the amount stated in the Order or, if not in the Order, at the price set out in Supplier's quotation or published price list in force as of the date of the Order. The price includes all packaging, transportation costs, customs duties, fees, and applicable taxes, including, but not limited to, all sales, use, or excise taxes. Unless otherwise agreed, all prices charged for Products must be stated (and payments made) in United States dollars. Fairchild Imaging has no liability for any taxes based on Supplier's assets or income or for which Fairchild Imaging has an appropriate resale or other exemption.
- 9.2. Any price decreases shall be effective upon the date of Supplier's announcement of any such decreases. Decreases will apply to any Products not yet paid for by Fairchild Imaging. No increase in price is effective, whether due to increased material, labor, transportation costs, or otherwise, without Fairchild Imaging's prior written consent.
10. **Invoices and Payment Terms.**
- 10.1. Supplier shall issue a separate invoice for each shipment of Products delivered by Supplier and for each set of completed Services. Supplier shall not issue any invoices before the Products or Services are delivered to Fairchild Imaging. Unless Fairchild Imaging provides alternate written instructions, Supplier shall submit all invoices to the Fairchild Imaging address specified on the Order. Supplier shall provide Fairchild Imaging in accordance with the Order and include on all invoices (i) the Order number; (ii) a description of Products and/or Services provided; (iii) the price; (iv) if Services are provided based on time and material pricing, the total price with a detailed description of the number of hours worked and fee per hour; and (v) expenses and pass-through costs approved by Fairchild Imaging, including details around such costs. Fairchild Imaging shall not be obligated to pay any amounts not properly invoiced within ninety (90) days after Products and/or Services are provided, including any pass-through expenses that otherwise would have been reimbursable in accordance with the Order.
- 10.2. Payment terms will be net sixty (60) days after Fairchild Imaging's receipt of an undisputed invoice from Supplier after full receipt of the Products or complete provision of Service. If Fairchild Imaging receives the invoice before complete receipt of the Products or complete provision of Service, the payment term shall begin once receipt of Products or provision of Service is complete.
- 10.3. If Fairchild Imaging pays Supplier any excess, improper, or invalid charges, Supplier must reimburse Fairchild Imaging for such payments promptly upon discovery or request. Payment of invoices shall be deemed correct unless Supplier notifies Fairchild Imaging of any payment discrepancies within thirty (30) days after receipt of payment.
- 10.4. Fairchild Imaging's payment of Supplier invoices does not waive or limit Fairchild Imaging's right to later challenge any or all charges in those paid invoices.
11. **Late/Incomplete Delivery.** Delivery of Products and Services shall strictly comply with the delivery date or delivery schedule, if any, requested by Fairchild Imaging. If at any time it appears Supplier will not meet such delivery date or schedule, Supplier shall promptly notify Fairchild Imaging in writing of reasons for, and the estimated duration of, the delay. If requested by Fairchild Imaging, Supplier shall ship such delayed Products by means to avoid or minimize delay to the maximum extent possible, including rerouting any shipment if appropriate and the use of a dedicated motor carrier or air freight, and any added costs shall be borne by Supplier.
12. **Acceptance.** All Products and deliverables are subject to final review, inspection, and acceptance by Fairchild Imaging notwithstanding any payment or initial inspection. Final review, inspection, and acceptance will be made by Fairchild Imaging within a reasonable time after receipt of Products or deliverables.
13. **Quality.**
- 13.1. Supplier understands Fairchild Imaging's goal is to receive defect-free Products. Accordingly, Supplier agrees to use its best efforts to deliver defect-free Products to Fairchild Imaging at the lowest possible cost as defined and measured by Fairchild Imaging's system for measuring supplier performance. Supplier agrees to promptly notify Fairchild Imaging if Supplier has information that reasonably suggests one or more Products do not meet or will not continue to meet the Specifications. Supplier agrees to communicate openly and work together with Fairchild Imaging to achieve the quality objectives expressed above.
- 13.2. Supplier shall provide at no charge such technical and engineering assistance and information as Fairchild Imaging may request in order to enable Fairchild Imaging to investigate problems with Fairchild Imaging's products which Fairchild Imaging reasonably believes are related to, caused by, or involve the Products. If Fairchild Imaging is required to recall or conduct a field correction of any of its products due to the failure of any Product to meet its specifications, Supplier will cooperate fully with Fairchild Imaging in planning and conducting the corrective actions and manufacturing any necessary replacement Products. If the corrective action was required because Supplier failed to manufacture a Product in accordance with its Specifications or to properly package or ship the Product, Supplier will provide replacement Products at no cost to Fairchild Imaging.
14. **Warranty.**
- 14.1. Notwithstanding any other representation, warranty, or agreement to the contrary, Supplier unconditionally represents and warrants the following:
 - 14.1.1. The Products and Services supplied pursuant to the Order shall be of merchantable quality, conform to applicable industry standards and practices, conform to the Specifications, be suitable for Fairchild Imaging's intended uses and purposes in the ordinary course of its business, and be free from defects in design, material, appearance, and workmanship;
 - 14.1.2. All Product will be new and unused and shall not contain used or repaired parts unless requested by Fairchild Imaging in writing, in which case such Product shall be clearly labeled as refurbished;
 - 14.1.3. Supplier and its employees and agents will be properly licensed, certified, and/or accredited, and have sufficient skills, knowledge, and training, to manufacture the Products;
 - 14.1.4. All Services provided by Supplier shall be provided by qualified personnel reasonably skilled and trained in the performance of the Services and in a good, professional, and workmanlike manner in accordance with applicable laws and industry standards;
 - 14.1.5. Any documentation provided to Fairchild Imaging by Supplier shall meet reasonable standards of clarity and detail;
 - 14.1.6. The Product, including any stand-alone Software, shall not contain any harmful code, time bombs, viruses, worms, backdoors, or similar software which may cause damage to any item or data, nor shall it contain any time-sensitive code or other disabling devices, key lock or code that has potential or capability of causing any unplanned interruption of the operation of the Product;
 - 14.1.7. Supplier will, at the time of delivery of any Product or performance of the Services, have all the rights and licenses in such Product necessary to allow Fairchild Imaging to own, use and/or receive such Product without additional restrictions or charges, and the Product and/or Services shall not infringe on any third-party's intellectual property rights, including any third-party's confidential information, trade secrets, copyrights, or patents;
 - 14.1.8. Supplier is currently under no obligation to any party, nor will Supplier enter into any obligation with any party, that could interfere with Supplier delivering the Products or Services in the Order; and
 - 14.1.9. Supplier shall comply with, and the Products and Services provided by Supplier shall be in compliance with, all laws, ordinances, and regulations, including those relating to the environment, occupational safety and health, labor standards, assembly and supply of goods, International Standards Organization Rules, and any permits, licenses, and certifications Supplier is required to maintain.
- 14.2. Supplier does not, or Products or Services provided by Supplier to Fairchild Imaging do not, conform (i) to these Terms and Conditions, including, but not limited to, any representations and warranties described herein, in the Order, or in any other requirements of the Order, (ii) any applicable industry standards or practices, (iii) the Specifications or any other similar criteria required by Fairchild Imaging, ("Noncomplying Product"), then following Fairchild Imaging giving Supplier notice of noncompliance, Fairchild Imaging may, at its option and sole discretion, and without limitation of other remedies, deal with Noncomplying Product as follows:
 - 14.2.1. For Products, return Product to Supplier at Supplier's expense and either (i) allow Supplier to send replacement conforming Product within an agreed delivery schedule or no later than ten (10) days after Fairchild Imaging's notice of noncompliance or (ii) allow Fairchild Imaging to cancel the Order and receive an immediate refund;
 - 14.2.2. For Products, accept the defective Products at an equitable, agreed-upon reduction in price; or
 - 14.2.3. For Services, either (x) require re-performance of non-conforming Services or (y) cancel the Order for non-conforming Services and receive an immediate refund.
- 14.3. Fairchild Imaging reserves its inspection and acceptance rights for any substitute or replacement items. Repaired or replacement Products shall be warranted by Supplier to the same extent and for the longer of: (i) ninety (90) days from delivery to Fairchild Imaging or (ii) the remainder of the original warranty period.
- 14.4. All Noncomplying Products, all Products exhibiting epidemic defects, all replacement or repaired Products with respect to any of the same, and all over-shipped, under-shipments, or early or late shipments returned by Fairchild Imaging to Supplier, shall be shipped at Supplier's risk and expense including packing and freight charges to and from Supplier, and Supplier shall reimburse Fairchild Imaging for any inspection costs incurred by Fairchild Imaging with respect to the same.
15. All representations and warranties shall extend to Fairchild Imaging and its customers, and the users of the Products or Services into which such Products or Services may be incorporated. All third-party warranties and representations obtained by or applicable to Supplier in connection with any Products and Services in the Order are deemed provided, in addition, for the benefit of Fairchild Imaging and its customers and users. Nothing in this clause shall be construed as limiting in any way Supplier's other warranties to Fairchild Imaging.
- 15.1. These warranties survive any delivery, inspection, acceptance, or payment of or for the Products or Services by Fairchild Imaging. These warranties are cumulative and in addition to any other warranty provided by Supplier or by law or equity. Any applicable statute of limitations runs from the date of Fairchild Imaging's discovery of the noncompliance of the Products or Services with the foregoing warranties.
- 15.2. Acceptance of any part of the shipment of Products or any part of the Services shall not bind Fairchild Imaging to accept any non-conforming Products or non-conforming Services simultaneously provided by Supplier, nor deprive Fairchild Imaging of the right to reject any previous or future non-conforming Products or Services. Fairchild Imaging may cancel the Order and seek any other remedies available in accordance with applicable law, including cover and/or additional incidental and consequential damages from Supplier if Supplier does not, or Products or Services provided by Supplier to Fairchild Imaging do not, conform to the Order and these Terms and Conditions, including delivery of Products or Services that do not strictly comply with the Specifications or the delivery date or schedule, if any, provided to Supplier by Fairchild Imaging.
- 15.3. Supplier shall promptly notify Fairchild Imaging of any fact, event or circumstance that would make any representation or warranty provided by Supplier untrue or inaccurate in any respect.
16. **Design and Manufacturing Changes.**
- 16.1. Supplier shall not change the design or manufacture of any Product or delivery of Service ordered in any way. Supplier shall not change the design and manufacture in place at the time Fairchild Imaging evaluated the Product or Service for purchase. This includes, but is not limited to: (i) software, firmware, or other control or interface; (ii) any change that would or could affect the use or compatibility of the Product or Service with other materials or substances; (iii) any change in the scope of the order, design, formulation, raw materials, components, suppliers of raw materials, subcontractors, part numbers, packaging, product documentation (including any certificate of analysis), specifications, performance, functionality, labeling, form, fit, function, manufacturing process, manufacturing location; or (iv) any other aspects of the Products or their manufacture.
- 16.2. Changes in manufacturing process of the Products or delivery of Services supplied to Fairchild Imaging shall be announced: (i) eighteen (18) months in case of discontinuation of production; (ii) three (3) months in case of delivery of Service; and (iii) twelve (12) months in case of any other changes.
- 16.3. In the event of the discontinuation of the Products or any related components, including unacceptable changes, Supplier shall offer Fairchild Imaging an opportunity to exercise a last time buy option at its then current prices. Such option shall not unreasonably limit the quantities purchased and the delivery dates shall be extended to the latest date possible. Upon Fairchild Imaging's request, and without obligation or charge to Fairchild Imaging, Supplier shall provide technical information, documentation, and rights required to permit Fairchild Imaging to manufacture, continue to sell, maintain, and support such Products. All material (testing protocols, plant certificates, drawings, plans, manuals, security data sheets, source code for software specially developed for Fairchild Imaging, and the like), which are required for the acceptance, approval, operation, maintenance, and repair shall be delivered simultaneously without extra charges by Supplier in the requested language and in a form suitable for copying. Supplier shall promptly notify Fairchild Imaging of all changes to this manufacturing material.
17. **Counterfeit Parts.** Supplier represents and warrants that it shall not, under any circumstances, provide "Counterfeit Parts". A Counterfeit Part is defined to include, but is not limited to: (i) an item that is an illegal or unauthorized copy or substitute of an Original Equipment Manufacturer ("OEM") item; (ii) an item that does not contain the proper external or internal materials or components required by the OEM or that is not constructed in accordance with OEM design; (iii) an item or component that is used, refurbished, or reclaimed but Supplier represents as being a new item; (iv) an item that has not successfully passed all OEM required testing, verification, screening, and quality control but that Supplier represents as having met or passed such requirements; or (v) an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM item is a genuine OEM item when it is not. If Counterfeit Parts are furnished under the PO, knowingly or otherwise, Supplier shall promptly replace such Counterfeit Parts with parts acceptable to Fairchild Imaging. Supplier shall be liable for all costs relating to the removal and replacement of such Counterfeit Parts, including direct, indirect, special, or consequential damages.
18. **U.S. Government Eligible.** If Supplier is providing Products for use in Fairchild Imaging's U.S. operations, Supplier represents and warrants that Supplier is not excluded, debarred, or otherwise suspended from participating in U.S. government procurement and non-procurement programs.
19. **Cancellation.**
- 19.1. Fairchild Imaging may cancel the Order at any time and for any reason upon written notice to Supplier. In the event of such cancellation, Supplier shall comply with any directions given by Fairchild Imaging in such notice with respect to the Products and Services in the Order and cease all other shipment and delivery of Products and Services with respect to the Order.
- 19.2. If cancelled, within forty-five (45) days from the effective date of such cancellation, Supplier shall provide to Fairchild Imaging all material, drawings, work-in-progress, and co-developed Intellectual Property related to the Order (in the state of completion or non-completion in which they exist on the date of cancellation) and submit an invoice to Fairchild Imaging for all Products and Services provided by Supplier and accepted by Fairchild Imaging in accordance with the Order prior to cancellation, but only to the extent relating to such Products or Services for which Supplier has not already submitted an invoice to Fairchild Imaging. Fairchild Imaging agrees to pay all undisputed amounts in accordance with the Order and these Terms and Conditions. In no event shall Fairchild Imaging be responsible for any amounts in the aggregate greater than (i) the total that would have been due under the Order or (ii) the value of the work done by Supplier in accordance with the Order prior to cancellations, whichever is less.
20. **Indemnification.**
- 20.1. Indemnification Obligation. Supplier shall defend, indemnify, and hold harmless Fairchild Imaging and all its respective directors, officers, employees, agents, contractors, consultants, suppliers, customers, and distributors ("Indemnitees") from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, authorized settlements, costs, and expenses as incurred, whether directly or by third parties, including without limitation, attorney's fees ("Claims"), arising out of or in connection with any alleged or actual:
 - 20.1.1. Infringement by Supplier or the Products, alone or in combination with other goods and services, of any Intellectual Property rights of any third-party;
 - 20.1.2. Bodily injury (including death) or damage to real or tangible personal property;
 - 20.1.3. Breach of any of Supplier's representations, warranties, and covenants contained in the Order;
 - 20.1.4. Acts or omissions of Supplier;
 - 20.1.5. Acts or omissions that result in any violation by Supplier or by a Product or a Service of any governmental laws, rules, ordinances, or regulations;
 - 20.1.6. Failure to perform or comply with the Order;
 - 20.1.7. Breach of the NDA; and/or
 - 20.1.8. Claim by or on behalf of Supplier's subcontractors, materialmen, Suppliers, employees, or agents.

20.2. Supplier's indemnification obligations in this Section shall not extend to the percentage of a claimant's Claims attributable to the Indemnitee's negligence or other fault, breach of contract or warranty, or to strict liability imposed upon Indemnitee as a matter of law.

20.3. Claims and Cooperation. In the event of any Claim, Fairchild Imaging shall:

20.3.1. Notify Supplier; and

20.3.2. Tender to Supplier (i) sole control of the defense to the extent the Claim applies to the Products and (ii) defense of the Claim to the extent the Claim relates to Supplier's conduct, but Fairchild Imaging retains the right, at its option, to participate in such defense; and

20.3.3. At Supplier's expense, reasonably cooperate with Supplier in the defense; and

20.3.4. Not settle any such Claim without Supplier's prior written consent which Supplier shall not unreasonably withhold. Supplier shall keep Fairchild Imaging informed at all times as to the status of Supplier's efforts and consult with Fairchild Imaging (or Fairchild Imaging's counsel) concerning Supplier's efforts. Supplier shall not settle any such Claim without Fairchild Imaging's prior written consent which Fairchild Imaging shall not unreasonably withhold. Upon Fairchild Imaging's request, Supplier shall disclose to Fairchild Imaging the terms of any settlement of a Claim involving a Product. Notwithstanding the foregoing, in the event that Supplier fails to respond to a tender within ten (10) business days or Supplier refuses to accept tender, then Fairchild Imaging may proceed to settle or otherwise defend the Claim as Fairchild Imaging deems appropriate.

20.4. In the case of Section 20.3, Supplier remains fully responsible for all costs and expenses incurred by Fairchild Imaging, including any amounts awarded by a court or other judicial body. Without limiting other remedies available to Fairchild Imaging, including order of Supplier in the underlying action, Fairchild Imaging may immediately offset expenses as they are incurred from amounts payable to Supplier.

20.5. Infringement Remedies. If an infringement Claim is made or appears likely to be made about a Product, Supplier shall, in addition to Supplier's indemnification obligations as set forth in this Section, at Fairchild Imaging's option, either (i) procure for Fairchild Imaging the right to continue to use, market, and sell the Product, (ii) modify the Product so that it is no longer infringing, or (iii) replace it with a non-infringing Product. If the parties determine that none of these alternatives is commercially reasonable, Fairchild Imaging shall return any infringing Products in inventory freight-collect to Supplier's designated location for a credit or refund of the purchase price.

21. **Fairchild Imaging Provided Property.** "Fairchild Imaging Provided Property" means any tools, equipment, samples, specimens, compounds, or any other materials of every description provided to Supplier, or paid for, by, or on behalf of Fairchild Imaging. All Fairchild Imaging Provided Property, any replacement, and any materials affixed or attached thereto shall be and remain the property of Fairchild Imaging. All Fairchild Imaging Provided Property shall be safely stored separate and apart from Supplier's property. Supplier shall not use Fairchild Imaging's property except in filing Fairchild Imaging's Orders nor substitute any property for Fairchild Imaging Provided Property. Supplier shall not dispose of any Fairchild Imaging Provided Property without Fairchild Imaging's prior written approval. While such property is in Supplier's custody or control, it shall be maintained to applicable standards at Supplier's cost, shall be held at Supplier's risk, and shall be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Fairchild Imaging. Fairchild Imaging Provided Property shall be subject to removal at Fairchild Imaging's written request, in which event Supplier shall prepare such property for shipment and shall return to Fairchild Imaging in the same condition as originally received by Supplier, reasonable wear and tear excepted. Fairchild Imaging may enter Supplier's premises at any time during regular business hours to inspect or recover Fairchild Imaging Provided Property without providing Supplier notice.

22. **Intellectual Property.**

22.1. "Intellectual Property" means any patent rights, copyrights, trademark rights, trade secrets rights, database rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world, including inventions, works of authorship, mask works, ~~patent~~ ~~data~~ ~~computer~~ ~~software~~, software documentation, or other protectable designs.

22.2. "Background IP" means any Intellectual Property owned, created, developed, leased and/or licensed by a party prior to, outside of or independently from the Order. Each Party shall own its Background IP.

22.3. Supplier grants Fairchild Imaging a perpetual, irrevocable, non-exclusive, transferable, worldwide, fully paid-up, royalty-free license to use any Intellectual Property or Background IP, with the right to sublicense through multiple tiers, as it is embedded or incorporated in Product, or that is necessary for use of Product, including any bug fixes, updates, or upgrades developed by Supplier for the Product, except where such included Intellectual Property or Background IP is subject to a separate license granted under a separate agreement. This license allows Fairchild Imaging to use such Intellectual Property or Background IP as included in (and in connection with) the Product. Fairchild Imaging may transfer this license if it transfers the use, sales, or distribution of the Product either to another Fairchild Imaging entity, a third-party, or a successor owner by sale or lease. Supplier assigns and passes through to Fairchild Imaging all of the third-party manufacturers' and licensors' warranties and indemnities for the Product.

22.4. Any Specifications provided to Supplier by Fairchild Imaging and all related Intellectual Property, including product designs, manufacturing processes, and trade secrets, shall remain Fairchild Imaging's sole and exclusive property.

22.5. Fairchild Imaging will be the exclusive owner of all deliverables created by Supplier during or related to the performance of the Order ("Deliverables"), any works based on or derived from such Deliverables ("Derivatives"), and any ideas, concepts, inventions, or techniques that Supplier may conceive or first reduce to practice during or related to performance of the Order ("Deliverable Concepts") or any derivative of, or through use of, any Fairchild Imaging Provided Property (collectively, with the Deliverables, Derivatives, and Deliverable Concepts, "Fairchild Imaging Property") and all Intellectual Property rights therein, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any governmental authority ("Intellectual Property Rights").

22.6. All copyrightable Fairchild Imaging Property created by Supplier during or related to the performance of the Order shall be considered a "work made for hire" for Fairchild Imaging. Further, Fairchild Imaging shall be considered the author of the Fairchild Imaging Property for purposes of copyright and all worldwide right, title, and interest therein shall be in each case the property of Fairchild Imaging as the party specially commissioning such work. However, an exception to the above will be when and to the extent (x) such employment is not permitted under applicable law or (y) the designation of Fairchild Imaging Property as a "work made for hire" would establish an employment relationship under applicable law between Fairchild Imaging and Supplier.

22.7. To the extent any Fairchild Imaging Property is not "work made for hire," or to the extent that Fairchild Imaging does not otherwise acquire ownership of any copyrights, and with respect to all other Intellectual Property Rights, Supplier irrevocably assigns to Fairchild Imaging for no additional consideration, and shall cause its personnel to irrevocably assign to Fairchild Imaging, all right, title, and interest in and to the Fairchild Imaging Property and all related Intellectual Property Rights, including the right to sue, recover damages, and obtain other relief from other persons for any past, present, and/or future infringement, dilution, misappropriation, or other violation of or conflict with any of those Intellectual Property Rights. To the extent such assignment of rights and ownership is invalid or any of the foregoing rights, including so-called "moral rights" or rights of "droit moral," may be inalienable, Supplier agrees to waive and agrees not to exercise such rights, and if such waiver and agreement are deemed invalid, to grant to Fairchild Imaging and its designees the exclusive, transferable, perpetual, irrevocable, worldwide, and royalty free right to make, use, market, modify, distribute, transmit, copy, sell, practice, offer for sale, and import the Fairchild Imaging Property and any process, technology, software, article, equipment, system, unit, product, or component part covered by the Deliverable Concepts or a claim of any patent in any part of the Deliverable Concepts. At Fairchild Imaging's request, Supplier will execute any instrument, or obtain the execution of any instrument, including from any employee or contractor, that may be appropriate to assign the rights to Fairchild Imaging in accordance with this Section or perfect such rights in Fairchild Imaging's name. If Supplier fails to execute any assignment in accordance with this Section within fifteen (15) calendar days after a request by Fairchild Imaging, Supplier appoints Fairchild Imaging as Supplier's attorney in fact for the sole purpose of executing any such assignment on behalf of Supplier to Fairchild Imaging and Supplier agrees to be thereby bound.

22.8. Supplier agrees that it will not seek to enforce any of its Intellectual Property rights (excluding trademark rights) against Fairchild Imaging in connection with Fairchild Imaging's independent development and use of any product, software, services, and/or materials that are similar to the Products; provided however, the foregoing shall not prevent Supplier from otherwise enforcing the Order.

22.9. Supplier shall include on the face of all copyrightable material prepared for Fairchild Imaging a copyright notice identifying Fairchild Imaging and the year of publication in legible form. Supplier shall provide Fairchild Imaging with all relevant or necessary design drawings, source code, and other documents detailing the Intellectual Property Rights with respect to the Fairchild Imaging Property (including any open-source software used and all relevant terms and conditions associated with their use). Except in connection with the Order to provide the Products or Services to Fairchild Imaging, Supplier shall not use any Intellectual Property Rights with respect to the Fairchild Imaging Property in any manner or for any reason. Without limiting the foregoing, Supplier agrees that neither Supplier nor any of its affiliates shall sell or distribute, or authorize the sale or distribution by any third-party, of any Products or Services using the Intellectual Property Rights with respect to the Fairchild Imaging Property to any party other than Fairchild Imaging.

23. **Software.** If the Products set forth in the Order include any software (including pursuant to a software-as-a-service offering), related documentation and/or updates thereto ("Software"), the following applies:

23.1. Unless developed for Fairchild Imaging, Supplier shall retain all Intellectual Property Rights in and to the Software. Supplier grants to Fairchild Imaging a perpetual (unless otherwise limited in the Order to a specific duration), worldwide, non-exclusive license to access and use the Software for the business purposes of Fairchild Imaging. If the Order limits the Software to use by a certain number of users, then Fairchild Imaging may replace a user with another user from time to time, provided that the then-current number of users using the Software does not exceed such number. If Supplier determines that Fairchild Imaging have exceeded rights to the Software in the Order through increased usage that is otherwise in accordance with these terms and conditions, Supplier shall promptly notify Fairchild Imaging in writing of such excess usage and Fairchild Imaging shall thereafter promptly eliminate such excess usage. If Fairchild Imaging does not eliminate such excess usage, Supplier's exclusive remedy shall be to invoice Fairchild Imaging proportionally for such excess usage using the pricing set forth in the Order.

23.2. Fairchild Imaging may (i) make a reasonable number of backup or archive copies of any Software provided by Supplier and (ii) permit one or more third parties to exercise the rights granted to Fairchild Imaging, provided that any such third-party may only use the Software to provide Products to or perform Services for Fairchild Imaging. Except as expressly permitted herein, Fairchild Imaging shall (i) not reverse engineer, decompile, or otherwise discover the source code of the Software; (ii) not remove any copyright, trademark, or other proprietary rights notices in the Software; and (iii) reproduce such notices on any copies of the Software. Supplier shall electronically deliver the Software such that no tangible media passes to Fairchild Imaging.

24. **Termination.**

24.1. Expiration. The Order will continue until all Services, Product warranties, or licenses expire or are terminated unless terminated earlier in accordance with this Section 24.

24.2. Mutual Agreement. The Order may be terminated by mutual written agreement. The agreed-upon date shall become the Termination Date.

24.3. Written Notice of Termination for Convenience. The Order may be terminated earlier for convenience by Fairchild Imaging upon thirty (30) days' written notice to Supplier. The listed date shall become the Termination Date.

24.4. Termination for Financial Status. The Order may be terminated earlier by Fairchild Imaging on an immediate basis if Supplier:

24.4.1. Makes an assignment for the benefit of its creditors, a receiver is appointed for Supplier, or any bankruptcy or insolvency proceedings are instituted by or against Supplier;

24.4.2. Becomes unable to pay its debts, becomes bankrupt (if a Party is a natural person), enters into liquidation, makes an arrangement with its creditors, becomes subject to an administration order, a receiver or administrative receiver is appointed over all or any of its assets, takes or suffers to be taken any similar action in consequence of a debt, ceases or threatens to cease trading, or is dissolved; or

24.4.3. Ceases, for any reason, to be able to exercise its powers or perform its obligations or otherwise to carry on under the Order.

24.5. Termination for Material Breach. Either Party may terminate the Order with thirty (30) days of notice by giving the other Party written notice if the other Party is, or in the reasonable opinion of the non-breaching Party appears to be, acting (or acted) in material breach of these Terms and Conditions, and the breaching Party has not cured the material breach within thirty (30) days. For this Section 24.5, the thirtieth date following notice is the Termination Date.

*** End of Terms and Conditions ***

25. **Confidential Information.** The Parties acknowledge and agree any Confidential Information exchanged under these Terms and Conditions, and all Intellectual Property Rights under these Terms and Conditions or otherwise, shall fall subject to the protections provided by the applicable non-disclosure agreement executed between the Parties. If there is not a non-disclosure agreement executed between Supplier and Fairchild Imaging, then the terms of this Section shall apply. "Confidential Information" means information that is designated as confidential or proprietary. Confidential Information may only be disclosed to the receiving Party's personnel, professional advisors, agents, and subcontractors ("Representatives"), on a "need-to-know" basis in connection with the Order. Representatives shall be bound to treat the Confidential Information under terms at least as restrictive as those herein, and the receiving Party shall be liable for unauthorized disclosures by its Representatives. Each Party will use at least the same degree of care as it employs with respect to its own Confidential Information, but not less than a commercially reasonable standard of care. The foregoing shall not apply to information that (i) is independently developed without use of the other Party's Confidential Information; (ii) has been obtained from a source which is not under a confidentiality obligation; or (iii) is or becomes publicly available without fault of the receiving Party. If receiving Party must disclose Confidential Information as required by law, it shall give reasonable prior notice to the disclosing Party. These obligations shall continue for five (5) years from the initial date of disclosure, except that obligations related to information about a Party's Intellectual Property shall never expire.

26. **Publicity.** Supplier shall not, without the prior written consent of Fairchild Imaging, originate any publicity (including any news release or public announcement), use any logos, trademarks, service marks, or names of Fairchild Imaging or any of its affiliates, nor quote the opinion of any Fairchild Imaging employee.

27. **Notice.** All notices provided for in these Terms and Conditions will be directed to each Party at the address set forth on the Order. All notices shall be in writing and shall be sent by United States mail (if domestic delivery), commercial overnight delivery service, electronic mail, or facsimile transmission. Notices sent by United States Mail shall be sent by first class mail, registered or certified, postage prepaid, and shall be deemed to have been given on the date actually received or the fifth day after mailing, whichever is earlier. Notices sent by commercial overnight delivery service shall be sent using a service that provides traceability of packages and shall be deemed given on the date of receipt. Notices sent by electronic mail or facsimile transmission shall be deemed given on the first business day after the date they are transmitted, provided a confirming signed original is mailed within one business day. Supplier's notice address shall be as set forth on the Order. Fairchild Imaging's notice address is:

Fairchild Imaging, Inc.
1841 Zanker Road
Suite 50
San Jose, California 95112 USA

Attn: Doug Humphrey
Phone: 408 406 7438
Email: dhumphrey@fcimg.com

Either Party may change its designated points of contact upon written notice to the other Party.

28. **Insurance.** Supplier shall, at its sole cost and expense obtain and maintain in force throughout the original term, and any extension, of these Terms and Conditions, insurance appropriate to the Products it sells and the Services it performs, with a company nationally recognized in the USA, which shall be primary to any insurance of Fairchild Imaging.

29. **Law, Governance, and Courts.**

29.1. "Applicable Law" means any Federal, state, and/or local (i) law, statute, ordinance, rule, or regulation; (ii) order or ruling of any court, tribunal, or any other judicial body; or (iii) rule, regulation, guideline, or order of any Public Body, or any other administrative requirement, including, but not limited to, anti-boycott laws, anti-corruption laws, or export laws, in the jurisdictions where the Parties operate.

EACH PARTY AGREES TO FOLLOW ALL APPLICABLE LAWS.

29.3. Without reflection on the importance of other laws, Supplier shall specifically comply with all anti-corruption laws, such as the USA Foreign Corrupt Practices Act, the UK Bribery Act, and local bribery and corruption laws ("Anti-Corruption Laws"). Without limiting the foregoing, Supplier shall not, directly or indirectly, make any payments, offer or transfer anything of value, agree or promise to make any payment or offer to transfer anything of value, to any employee, agent, or representative of Fairchild Imaging, to any government official or government employee, or to any political party official or candidate for political office or to any other third-party related to the transaction in a manner that would violate Anti-Corruption Laws.

29.4. Jurisdiction. These Terms and Conditions shall be governed, interpreted, and enforced by the law of the State of California, without making reference to its conflicts of law provisions. Any lawsuit or cause of action that arises from or is related to these Terms and Conditions shall be filed with and litigated only in a court of competent jurisdiction located in the County of Santa Clara in the State of California.

29.5. Any action by Supplier for loss or damage arising from or related to the Products and/or Services must be commenced within the earlier of one (1) year from the date of delivery or occurrence of the event, or such claim will be forever barred.

30. **Supplier Behavior.** Supplier and its personnel, employees, agents, and subcontractors will abide by all rules and regulations while on Fairchild Imaging's premises. Supplier's staff shall not engage in any activities that could be deemed harassing (including sexual harassment) or discriminatory. Supplier shall be responsible for such staff while they are on the premises whether or not any of their actions fall outside the scope and course of employment or engagement by Supplier. Supplier represents and warrants that it has a code of conduct, or relies upon a third-party code of conduct, either of which is sufficient to meet the requirements under the Sarbanes-Oxley Code of Ethics and related legislation, and will abide by such code of conduct for as long as Supplier provides Products or Services to Fairchild Imaging.

31. **Data Privacy.** Fairchild Imaging shall be entitled to process personal data of Supplier and to transfer personal data to affiliates to the extent this is necessary for the execution of these Terms and Conditions. If personal data is transmitted to Fairchild Imaging, Supplier must ensure that the collection and transmission of the data is lawful and has taken place. If one of the Parties processes personal data for the other party or the parties process personal data together, the Parties undertake to enter into the necessary data protection service plans. Notwithstanding the foregoing, Supplier shall receive, store, and process any personal data received from Fairchild Imaging in compliance with applicable laws and regulations, including, but not limited to, the UK Data Protection Act ("DPA") and EU General Data Protection Regulation ("GDPR").

32. **Records, Inspection and Audit Rights.**

32.1. Supplier shall maintain during the term and/or fulfillment of the Order and for a period of five (5) years from the later of (i) the date of the last delivery under these Terms and Conditions; (ii) the last payment related to the Order; (iii) the end of the Warranty Period for the Products or Services under the Order, detailed records of payments received and expenses incurred, including, but not limited to, the traceability of the Product from manufacturer, contract manufacturer of Supplier, or Supplier's manufacturing line, with supporting books, records and other information regarding activities under these Terms and Conditions, including, but not limited to, paper, electronically stored data, and magnetic media ("Audit Period").

32.2. Prior to shipment, Fairchild Imaging may conduct "in process" inspection of Product ordered at any place where work is being performed. During the Audit Period, Fairchild Imaging may audit or review Supplier, upon notice and in a non-disruptive fashion, to ensure Supplier's compliance with applicable laws and regulations and compliance with these Terms and Conditions.

32.3. Audit. If an audit is requested, Fairchild Imaging shall select a Third Party Auditor to perform the audit. The Third Party Auditor shall be an internationally recognized auditing firm. Supplier shall provide full access to the Third Party Auditor to the business records, financial records, and equipment, including equipment located in manufacturing facilities, related to these Terms and Conditions. Supplier shall provide, without additional charge, reasonable facilities and assistance for such inspections and tests.

33. **Force Majeure.** Neither Party to These Terms and Conditions shall be liable for its failure to perform its obligations due to events beyond its reasonable control, including, but not limited to: (i) war, acts of terror or terrorism, subversion, hostilities, invasion, sabotage, or rebellion; (ii) acts of God, fire, flood, pandemic, epidemic, quarantine restrictions, explosion, earthquake, storm, severe weather, accident, or other natural calamities; (iii) acts of public enemy, riots, civil commotions, strikes or other labor stoppages or disputes, lockouts, transportation difficulties, inability to secure material, insolvency of key suppliers, embargoes, production difficulties, accidents, or other reasons beyond Fairchild Imaging's control; and (iv) acts of any government or agency, judicial action, or non-expected government acts or regulations changing laws or enforcement presently in force. Delay occasioned thereby shall not be considered a breach of these Terms and Conditions.

34. **Independent Contractors.** Nothing in these Terms and Conditions shall be construed as (i) an obligation by either Party to enter into a contract, subcontract, or other relationship with the other Party, (ii) creating a joint venture or partnership between the Parties, or (iii) authorizing either Party to act as an agent of the other. Supplier's relationship to Fairchild Imaging is of an independent contractor. All costs, financial responsibilities, and other obligations associated with Supplier's business are the sole responsibility of Supplier.

35. **Severable.** If any of the provisions of these Terms and Conditions shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, that portion shall be severed, and a new enforceable provision shall be negotiated by the Parties and substituted therefore to accomplish the intent of the severed provision as nearly as practicable. The remaining provisions of these Terms and Conditions shall remain in full force and effect, so long as the absence of the severed provision does not frustrate the purpose of these Terms and Conditions.

36. **Waiver.** The failure of either Party to enforce at any time or for any period any provision of these Terms and Conditions shall not be construed to be a waiver of such provision or of the right of such Party thereafter to enforce each and every such provision. No waiver of these Terms and Conditions will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party.

37. **Survival.** Expiration or termination shall not affect, and shall be without prejudice to, the rights and obligations of the Parties established prior to the Termination Date. In addition to the Sections which were specifically identified as to survive, the Parties agree those Sections which should survive termination or expiration of these Terms and Conditions shall survive termination or expiration of these Terms and Conditions. The specific listing of a Section to survive does not make it more or less favored to survive than the other Sections that should survive, but simply that it is to survive.

38. **Assignment.** Fairchild Imaging may not assign or otherwise transfer these Terms and Conditions or any of its rights and obligations to any third-party (except to a legally recognized successor-in-interest to all or substantially all of its assets) without the prior consent in writing from Supplier, which consent shall not be unreasonably withheld. Supplier must not assign these Terms and Conditions or delegate, sub-contract, or transfer its rights and obligations under these Terms and Conditions in any way, without the prior written consent of Fairchild Imaging through an amendment to these Terms and Conditions. These Terms and Conditions shall benefit and be binding upon the successors and assigns of the Parties.

39. **LIMITATION OF LIABILITY. EXCEPT FOR (i) SUPPLIER'S INDEMNIFICATION OBLIGATIONS AND LIABILITIES, (ii) SUPPLIER'S CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN ANY NON-DISCLOSURE OR CONFIDENTIALITY AGREEMENT BETWEEN THE PARTIES, AND/OR (iii) SUPPLIER'S LIABILITY FOR FRAUD, PERSONAL INJURY, OR DEATH CAUSED BY ITS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES UNDER ANY PART OF THE ORDER, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE ORDER, REGARDLESS OF WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF AGREEMENT, WARRANTY, CONTRACT, NEGLIGENCE, OR TORT. REGARDLESS OF THE FORM (e.g., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL FAIRCHILD IMAGING OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) THE AMOUNT DUE FROM FAIRCHILD IMAGING AS SET FORTH IN THE ORDER BUT NOT ALREADY PAID TO SUPPLIER FOR THE PRODUCTS OR SERVICES PROVIDED BY SUPPLIER IN ACCORDANCE WITH THE ORDER AND THESE TERMS AND CONDITIONS OR (ii) \$1,000. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION, AND LIMITATION.**