1. **CONTRACT:** These Terms and Conditions, and the written purchase order that accompanies, attaches, or incorporates them, constitute the terms of an offer by eResearch Technology, Inc. (“ERT”). This offer expressly limits acceptance to the terms of the offer, and ERT hereby provides notification of objection to any different or additional terms contained in any response to this offer that does not exactly match the terms of this offer. In addition to the other terms of this offer, this offer expressly includes all implied warranties (including but not limited to those set forth in PA Rev Stat § and all of the buyer’s remedies (including but not limited to those set forth in PA Rev Stat § set forth in the Uniform Commercial Code (“UCC”) or that are otherwise applicable. If these Terms and Conditions, and the written purchase order that accompanies, attaches, or incorporates them, are considered an acceptance, this acceptance is expressly conditioned on sellers assent to any different or additional terms, express or implied, in these Terms and Conditions, and the written purchase order that accompanies, attaches, or incorporates them. These Terms and Conditions, and the written purchase order that accompanies, attaches, or incorporates them, collectively will be referenced in this document as contract, and they are the sole and exclusive terms on which ERT agrees to be bound. This Contract will become legally enforceable on the earlier of delivery of a signed acknowledgement commencement of performance, or shipment of all or any portion of the Goods (as defined in Section 3 of these Terms and Conditions) covered under this Contract, by Seller. Except as otherwise expressly set forth in this Contract, ERT has no obligation to purchase any specific quantity of Goods from seller and ERT will be entitled, in its sole discretion, to purchase the same or similar Goods from other suppliers. This Contract is intended to be the complete, exclusive, and fully integrated statement of the parties’ agreement regarding the Goods. As such, it is the sole repository of the parties’ agreement and they are not bound by any other agreements, promises, or representations of whatsoever kind or nature. The parties also intend that this complete, exclusive and fully integrated statement of their agreement may not be supplemented or explained (interpreted) by any evidence of trade usage or course of dealing.
2. **PREDOMINANT PURPOSE OF CONTRACT:** The predominant purpose of this Contract is the sale of goods, notwithstanding certain attendant services. The provisions of Article 2 of the UCC, as adopted in the State of Delaware, apply to this Contract.
3. **WARRANTIES:** The seller supplying the goods, materials and attendant services (“Goods”) pursuant to the terms of this Contract (“Seller”) warrants that, from the date of tender of delivery of the Goods and for a period of four (4) years thereafter, all Goods: (i) shall conform to all Applicable descriptions, specifications, drawings, plans, instructions, data, samples, and models, including those provided by the Seller after contract formation; (ii) shall be merchantable and free from defects in materials, design, and workmanship (whether or not approved by ERT); (iii) shall be fit for the particular purpose(s) for which the Goods are required, and Seller acknowledges that ERT is relying on the Seller’s skill or judgment to furnish suitable Goods; (iv) shall be composed of all new components; (v) shall be free and clear of any liens, encumbrances, any actual or claimed patent, copyright or trademark infringement, or other colorable claims; and (vi) shall be manufactured and sold in compliance with all applicable federal, state and local laws, regulations or orders, and trade standards applicable to the Goods. Such warranties explicitly extend to future performance of the Goods. Seller warrants that all services provided in connection with this Contract shall be performed in a professional, competent and lawful manner and in accordance with industry best practices.
4. **PRICE:** If during the term of this Contract, Seller sells goods that are the same or are substantially similar to the Goods to another customer at prices below those stated in the Contract, Seller will promptly extend such lower prices to ERT. If ERT provides reasonable evidence that it can purchase goods of like quality and similar or greater quantity as the Goods at a lower price, and if Seller elects not to meet such lower price, then all quantities of such goods actually purchased by ERT at a lower price will be deducted from the remaining quantity obligation for such Goods required hereunder.
5. **SHIPMENT:** Seller’s shipment of Goods shall be F.O.B., place of destination (as defined by PA Rev Stat § listed on ERT’s Purchase Order form. All Goods shall be delivered in strict conformity with the dates listed on ERT’s Purchase Order. Time for delivery is on the essence.
6. **MATERIAL SAFETY AND DATA SHEETS:** An appropriate material safety data sheet (“MSDS”) and labeling, as and if required by law, will preceded or accompany each shipment by Seller. Further, Seller shall send to ERT updated MSDS(s) and labeling as required by law.
7. **REJECTION AND REVOCATION OF ACCEPTANCE:** ERT has the right, before payment or acceptance of the Goods, to inspect the Goods at any reasonable place and time and in any reasonable manner. Neither the inspection, testing, or auditing of any Goods, nor the failure to do so, before deliver to ERT constitutes acceptance of any Goods, or relieves Seller from exclusive responsibility for furnishing Goods in strict conformance with the ERT’s specifications. If, in ERT’s judgement, the Goods or the tender of delivery fail in any respect to conform to the Contract, ERT may (a) reject the whole; (b) accept the whole; or (c) accept any commercial unit or units and reject the rest. Seller agrees that any notification of nonconformity by ERT, in whatever form, suffices to inform the Seller that the transaction is claimed to involve a breach, and that Seller will be responsible for any losses resulting from the nonconformity. In an appropriate case, ERT may revoke its acceptance of Goods. Seller agrees that ERT’s acceptance of the Goods is reasonably induced by the Seller’s assurances of the Goods’ quality and conformity to the terms of the Contract.
8. **TERMS OF PAYMENT:** Seller will promptly submit to ERT correct and complete invoices, supporting documentation, and other information reasonably requires by ERT in connection with the delivery of the Goods. ERT may withhold payment until such documents are received and verified. ERT will pay for Goods and services rendered net ninety days of ERT’s receipt of an accurate and approved invoice. Seller will provide Electronic Funds Transfer (“EFT”) instructions and ERT will make payments to the Seller electronically.
9. **AUDITS AND INSPECTIONS:** ERT has the right to examine and audit, during normal business hours and upon reasonable notice, any and all records, data, invoices and documents that may contain information relating to Seller’s obligations under this Contract. Such records will be kept by Seller for a period of at least four (4) years after the expiration, cancellation, or termination of this Contract, or for such longer periods as may be required by law. In addition, ERT may inspect or test at any reasonable time and place all Goods prior to delivery. Seller agrees to provide reasonable assistance for such audits, inspections and tests.
10. **TAXES:** Any applicable federal, state, or local taxes related to the manufacture or sale of Goods or the rendition of services is reflected in the price expressly stated int his Contract of the Goods and shall be paid by the Seller. Seller shall provide to ERT an itemization of the sales.
11. **CONFIDENTIALITY:** During the term of this Contract and for five (5) years after its cancellation, termination or expiration, Seller shall not make use of ERT’s Confidential Information (as hereinafter defined) for purposes other than the fulfillment of tile obligations under this Contract or disclose to any person or entity other than those of its employees who have a need to know, any Confidential Information, whether written or oral, which title Seller obtains from ERT or otherwise discovers in the performance of this Contract. Confidential Information as used in this Contract, shall mean all information relating to ERT’s business not generally available to the public. Confidential Information includes ERT information Confidential Information includes ERT information that Seller possesses that predates this Contract. The foregoing provisions of this paragraph shall not apply to any information that is: (a) rightfully known to Seller prior to disclosure by ERT; or (b) rightfully obtained by Seller from any third party; or (c) made available by ERT to the public without restrictions; or (d) disclosed by Seller with prior written permission of ERT; or (e) independently developed or learned by Seller through legitimate means; or (f) disclosed by ERT to a third party without a duty of confidentiality on the third party; (g) disclosed pursuant to any applicable laws, regulations, or order of a court of competent jurisdiction. Seller will provide reasonable prior notice to ERT if it is required to disclose any of ERT’s Confidential Information under operation of law. ERT expressly reserves the right to disclose any of the terms of this Contract, including but not limited to pricing, to third parties.
12. **INTELLECTUAL PROPERTY:** If Seller makes modifications to the specifications or any process related to the Goods specifically for ERT at ERT's request ("Custom Work”), ERT owns the Custom Work. Seller hereby assigns to ERT all rights, title and interest in the Custom Work and represents and warrants that: (a) the Custom Work was developed through Seller’s sole and original efforts and does not infringe the intellectual property or privacy rights of any person or entity, and (b) Seller has no other arrangement that would interfere with assigning all of its interest in the Custom Work to ERT. Seller may not use ERT’s name and/or logo in any manner other than as may be identified in this Contract without first obtaining written permission from ERT.
13. **INDEMNIFICAITON:** Seller will indemnify, defend, and hold harmless ERT, its directors, officers, employees, agents, representatives, successors, assigns, and customers (“Indemnitees”) from and against all liabilities, expenses, suites, claims, actions, demands, judgments, settlements, costs, losses, fines and penalties, including but not limited to attorney fees, costs and expenses of litigation (“Claims”), that arise out of or related to: (i) the Goods, defects in the Goods or their manufacture, delivery, use or misuse of the Goods; (ii) or the performance of this Contract; or (iii) breach of any of the provisions of this Contract, which Claims are caused in whole or in part by any negligence or any act or omission of Seller, its directors, officers, employees, subcontractors, agents, representatives, successors, or assigns, and regardless of whether or not such negligence or acts or omissions were caused in part by the Indemnitees. Seller hereby expressly agrees to waive any provision of any workers compensation act, disability, or other employee benefits laws, or any similar laws granting Seller rights and immunities as an employer, and expressly agrees to indemnify, defend, and hold harmless the Indemnities against all Claims brought by the workers, servants, agents or employees of Seller encompassed by this Section 13.
14. **LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES WILL ERT OR ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, MULTIPLIED OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORSEEABLE, OR PREJEDGMENT INTEREST OR ATTORNEYS’ FEES OR COSTS BASED ON CLAIMS OF SELLER OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT MISREPRESENTATION NEGLIGENCE OR PREJUDGMENT INTEREST OR ATTORNEY’S FEES OR COSTS BASED ON CLAIMS OF SELLER OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE. NOTWITHSTANDING THE FORM (e.g. CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT IN NO EVENT WILL ERT OR ITS AFFILIATES BE LIABLE FOR DAMAGES OOR LOSSES THAT EXCEED, IN THE AGGREGATE, THE GREATER OF; (a) THE AMOUNT DUE FROM ERT AS SET FORTH IN THE PURCHASE ORDER BUT NOT ALREADY PAID TO SELLER FOR THE GOODS OR SERVICES PROVIDED BY SELLER IN ACCORDANCE WITH THE PURCASE ORDER AND THESE TERMS AND CONDITIONS, OR (b) $1,000. THIS SECTION WILL NOT APPLY OLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.
15. **INSURANCE:** Seller shall (i) maintain in full force and effect casualty, property, products liability, and other lines of insurance of the types, on the terms, and in the amounts commensurate with its business and risks associated therewith ("Insurance”) and to comply with applicable workers compensation insurance laws regarding insurance or qualification as a self-insurer; (ii) to the extent permitted by law, waive rights of subrogation and contribution against ERT, including ERT as an additional insured, under policies of Insurance; (ii) ensure that ERT is made an additional insured on policies of Insurance under terms of coverage customary to the risk of loss to which ERT is exposed and that the limits of Insurance to which ERT is entitled as an additional insured are no less than the amount of total limits of Insurance applicable to Seller under all of the policies of Insurance; (iv) ensure that the policies of Insurance are stated to be specifically primary to any of ERT’s insurance policies, which policies shall be, in all respects, excess to Seller's policies of Insurance; (v) be solely responsible for any deductibles, self-insured retentions, or other form of self-insurance under the policies of Insurance; and (vi) upon ERT' s request, timely provide written certification, reasonably acceptable to ERT certifying the material terms of the policies of insurance.
16. **FORCE MAJEURE:** The parties hereto shall not be liable for failure of performance if occasioned by war, declared or undeclared, fire, flood, pandemic, interruption of electrical service or transportation, embargo, accident, explosion, inability to procure or shortage of supply of materials, equipment, or production facilities, prohibition of import or export of required materials or any other cause beyond the control of the parties.  Any suspension of performance by reason of this Section shall be limited to the period during which such cause of failure exists, and such suspension shall toll the running of the timeline otherwise agreed upon. Furthermore, Seller agrees that there is no agreed or single source of supply for Seller to fulfill its obligations under this Contract. The party affected by an event under this paragraph shall furnish prompt written notice of any delays or non-performance (including its anticipated duration) after becoming aware that it has occurred or likely will occur. If Seller is unable to perform for any reason, ERT may purchase the Goods from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the nonperformance will not exceed 30 days. If the nonperforming party does not provide those assurances, or if the nonperformance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.
17. **CHANGES:** ERT may, at any time, make written changes to this Contract, and Seller will continue performance of this Contract as so changed. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller’s obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly.
18. **TERMINATION OR CANCELLATION:** ERT may terminate this Contract, in whole or in part, at any time for convenience by giving written notice to Seller. After receiving written notice of termination, Seller will immediately cease production and delivery of all Goods indicated in the notice of termination and immediately take all possible action to mitigate any liabilities incurred by it as a result of the termination. Unless such termination is due to Seller's breach or failure of Seller to provide adequate assurance of performance, ERT will pay Seller, on a pro rata basis, for Goods delivered as of the date of termination. ERT shall have the right to cancel this Contract if, in its judgment, Seller has breached any of its terms, or if in ERT’s judgment, the credit or the ability of Seller to perform this Contract becomes impaired. In that case, ERT shall have the right to all remedies available to it under the law.
19. **NO ORAL MODIFICATION:** The terms of this Contract may not be modified except by a writing signed by the parties. No modification, amendment or waiver of any term or condition in the Contract shall be effective, nor shall any additional ordifferent terms or conditions, whether set forth in an invoice, confirmation, acceptance, shrink-wrap license, click wrap license, online terms of use or service or elsewhere, or pursuant to any course of dealing, usage of the trade or ERT’s acceptance of any goods or services, be effective, unless set forth in a writing signed by ERT and Seller.
20. **ANTI-WAIVER:** No term orprovision of this Contract shall be deemed waived, and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have provided such waiver or consent. No waiver of any right shall constitute a waiver of any other right, whether of a similar nature or otherwise.
21. **SEVERABILITY:** If any term of this Contract is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect. To the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this Severability provision should affect the price under this Contract, the party adversely impacted shall be entitled to a price adjustment for such adverse impact, provided the reason for the invalidity or unenforceability of the term is not due in whole or in part to the party seeking such price adjustment.
22. **SURVIVAL:** Notwithstanding the expiration, termination, or cancellation of this Contract, it is agreed that those rights and obligations which by their nature and context are intended to survive such expiration or termination shall survive, and in addition, Sections 3 and 11 through 14 shall survive for a period of seven (7) years beyond such expiration, termination, or cancellation.
23. **ASSIGNMENT:** Neither this Contract, nor Seller's rights and obligations hereunder, are assignable by Seller without the prior written consent of ERT. No such consent or assignment will release Seller or alter Seller’s liability to perform its obligations under this Contract. Any attempted assignment without the prior written consent of ERT will be null and void.
24. **COMPLIANCE WITH LAW:** Seller shall comply with all applicable commercial and public anti-bribery laws, including, without limitation, the U.S. Foreign Corrupt Practices Act. Seller and the Goods will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards or the country(ies) of destination and/or that relate to the manufacture, labeling, storage, transportation, importation, exportation, licensing, approval or certification of the Goods, including, but not limited to those relating to environmental matters, data protection and privacy, wages, hours, and conditions of employment, supplier selection, discrimination, occupational health/safety and motor vehicle safety. Upon request, Seller will furnish ERT with certificates of compliance therewith. Unless this Contract is otherwise exempted by law, Seller will comply with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974 and the Americans with Disabilities Act, as they have been or may be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. Seller warrants that the Goods delivered hereunder were produced at facilities complying with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under that Act. Seller further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration, Federal Aviation Administration Environmental Protection Administration, Food and Drug Administration, Consumer Product Commission, and Occupational Safety & Health Act Administration, International Standards Organization Rules 9,000 et seq. and any permits, licenses and certifications Seller is required to have. To the extent Supplier is deemed to be a U.S. federal contractor or covered subcontractor under applicable federal procurement laws, Supplier shall comply with the following (each of which is incorporated in this Purchase Order by reference): 41 CFR 60-1.4(a), 60-250.4, 60-300.5(a), 61-300.10, 41 CFR 60-741.5(a), 41 CFR 60-250.4, and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability. Seller will certify Seller's compliance with this Section on an annual basis and, to the extent legally permissible, will provide all information that ERT reasonably requests in order to verify such compliance.
25. **CHOICE OF LAW AND CHOICE OF FORUM:** Any and all claims or matters of dispute between the parties to this Contract, whether arising from the Contract itself or arising from alleged extra-contractual facts or incidents, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or any breach of the Contract, shall be resolved, governed by, construed, and enforced in accordance with the laws of the State of Delaware, regardless of the legal theory upon which such matters are asserted, including Delaware's statutes of limitations but not including its choice of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (“CISG") is hereby expressly excluded. Any and all claims or matters of dispute referenced in this paragraph shall be resolved in a court of competent jurisdiction in Mercer County, Delaware, which courts shall have exclusive jurisdiction of all such disputes. Seller waives any and all objections that it might otherwise have as to personal jurisdiction or venue in such courts.