1. General: A purchase order ("PO") from Viavi Solutions Inc. or one of its subsidiaries ("Viavi") constitutes that Viavi entity's offer to purchase the products, deliverables, and/or services described or referenced thereon (collectively, "Products") from supplier of such Products ("Seller") in accordance with the following terms and conditions and any additional terms and conditions printed on the face of the PO that do not conflict with such following terms (collectively, "Viavi Terms"). Seller shall be deemed to have accepted this offer, and in the absence of a separate, signed agreement between Viavi and Seller, the Viavi Terms become the exclusive and binding agreement between the parties for the purchase of Products ("Agreement"), upon the earlier of (i) acceptance or acknowledgment of the PO whether orally, in writing or otherwise, or (ii) commencement of performance of Seller’s obligations under the PO. All other terms and conditions are hereby expressly rejected and superseded by the Viavi Terms, and failure by Viavi to object to any other provision, and/or Viavi’s acceptance of the Products, shall not be deemed acceptance of Seller’s terms, nor a waiver of the Viavi Terms. Viavi Terms may only be excluded or amended by express written agreement signed by a duly authorized representative of Viavi. Estimates or forecasts provided by Viavi are for information purposes only, and shall not constitute commitments or obligations to purchase. If a separate, signed purchase agreement exists between Viavi and Seller with respect to the Products, the terms of such agreement shall prevail over any inconsistent terms herein. A copy, facsimile or electronic version of this document shall have the same force and effect as the original document. If Seller is located in Canada, the parties have agreed to draft this Agreement in English; les parties ont consenti à rédiger ce contrat en langue anglaise.

2. Prices: All prices shown on the face of the PO are FCA Seller's facility (Incoterms 2010), unless otherwise specified on the face of the PO, and are the maximum prices to be charged for the Products. Due dates for payment of invoices shall be net forty-five (45) days from the date of the PO. Discount shall not be applicable for payment made within 7 days of the date of the PO, unless specified on the face of the PO. Title to the Products shall pass to Viavi upon receipt at the identified destination point and, notwithstanding any term to the contrary herein, risk of loss in and damage to the Products shall pass to Viavi upon Viavi’s receipt of the Products. All prices are firm and fixed, except in the event of any decrease in Seller’s price for any Products in a quantity similar to that reflected in the PO, on or before delivery of Products is complete under such PO, in which case Seller shall provide a corresponding credit or rebate to Viavi within thirty (30) days or on the next invoice, whichever occurs sooner.

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

4. Shipping: Unless otherwise specified, Seller shall: (i) ship the material covered by the PO complete; (ii) ship in accordance with the instructions appearing on the face of the PO; (iii) place the PO number, freight carrier name, number of cartons (in shipment), Seller part number / description and Viavi part number with HTS (tariff code) and ECCN, and Viavi buyer name on all packaging and shipping documents; and (iv) label shipping cartons with Viavi part number(s) and quantity, serial number(s) (when applicable) and item description. Seller shall provide adequate protective packing to prevent loss or damage, and in accordance with best commercial practices in the absence of all specifications provided by the PO. Seller shall bear full responsibility for damage due to improper packing or shipping of the Products. No partial or complete delivery will be made prior to the delivery date or dates specified unless Viavi has given prior written consent. Viavi may, at its option and sole discretion, return any deliveries made prior to the delivery date, and in such event, Seller shall reimburse and fully indemnify Viavi for any and all costs or expenses related to such Product return.

5. Late Delivery: In this Agreement, time is of the essence. Failure to deliver Products within the time stated on the PO shall constitute a material breach. Seller shall notify Viavi as soon as it becomes aware that it cannot meet the delivery date specified on the face of the PO and shall propose a new delivery date. In the event of such delay, without prejudice to Viavi’s other rights and remedies hereunder: (i) Viavi reserves the right to instruct Seller to take any practicable action to remedy any delay in delivery; (ii) Viavi shall have the right to claim from Seller by way of liquidated damages, ten percent (10%) of the price per week or part thereof, for each week, or part thereof, such Products are delayed; (iii) Viavi may cancel the PO and/or reject the Products, without any liability whatsoever to Seller; and/or (iv) Viavi may purchase replacements elsewhere and Seller shall be liable for the actual and reasonable costs and damages Viavi incurs. Seller shall, at no additional cost to Viavi, employ accelerated measures such as material expediting fees, premium transportation costs or labor overtime to ensure the Products are delivered on or before the delivery date.

6. Cancellation & Rescheduling: Viavi may, at any time, with or without cause, unilaterally cancel or terminate the PO, in whole or in part ("Cancellation"). In the event Viavi terminates without cause, Viavi agrees to negotiate in good faith a reasonable compensation amount. Notwithstanding the foregoing, where Viavi provides Seller with notice of Cancellation of a PO at least thirty (30) days prior to the scheduled delivery date, Viavi shall have no liability or obligations to Seller whatsoever. Viavi may, without liability on five (5) days notice (or greater), reschedule any delivery date to a later date. Seller shall not, without Viavi’s prior written consent, commence manufacture, or procurement of parts for, the Products in advance of Seller’s normal lead time for such Products.

7. Changes: By written notice to Seller, Viavi may at any time unilaterally: (i) suspend the work or shipment under a PO in whole or in part for a stated time period; and/or (ii) make changes in one or more of the following elements: designs; drawings or specifications; method of shipment or packing; place or time of delivery; or quantities to be furnished. If such suspension of change causes a change in the cost of, or the time required for furnishing the Products, an adjustment may be made in the PO price and/or delivery schedule as agreed by Viavi. If a price and/or schedule adjustment is not included in the notice, no increase in price or delay in delivery will be allowed unless Seller makes, with a detailed explanation, a claim in writing within thirty (30) days from the notice date. Nothing contained in this Section shall excuse Seller from proceeding without delay in performing this PO as changed. Seller shall not make any changes to this Agreement without Viavi’s prior written consent. Breach of this provision shall entitle Viavi to immediately terminate the PO without any notice or liability to Seller whatsoever.

8. Inspection: Viavi shall have a reasonable time after delivery to inspect and accept the Products. Where Viavi discovers defective or non-conforming Products, Viavi may at its option and without prejudice to any other rights or remedies it may have hereunder, (i) replace such Products at Seller’s expense and at Viavi’s option return such Products for refund, credit, repair or replacement, (ii) obtain a price reduction, as determined by Viavi in good faith; and/or (iii) at Viavi’s option, Viavi may perform a partial or complete inspection, analysis and/or sorting of all delivered Products for the purposes of segregating any defective or non-conforming Products, and Seller shall pay, and fully indemnify Viavi for, Viavi’s expenses related to such inspection, analysis and/or sorting, including without limitation, any labor costs arising from such inspection, analysis, and/or sorting. If Seller delivers a quantity of Products greater than that specified in the PO, Seller may reject all or part of the exceeded quantity or accept all or part of such quantity. Any excess quantity of Product accepted by Viavi shall be subject to the terms and conditions of this Agreement. If Seller delivers a quantity of Products less than that specified herein, Viavi may cancel the PO in respect of the undelivered quantity without any liability to Seller whatsoever.

9. Warranty: Seller warrants to Viavi and its customers that: (i) the Products will be new and free from defects in title, design, material and workmanship; (ii) where applicable the Products will fulfill the specifications, drawings and samples furnished or accepted by Viavi; (iii) the Products shall comply with all laws, regulations, and industry standards applicable to the nature of the products supplied; (iv) Seller shall provide technical assistance, functionally equivalent replacement Products, repair services and failure analysis services, on any individual Product, including discontinued Products, for a period of ten (10) years after the later of: (a) the ship date to Viavi for any individual Product or (b) Seller’s discontinuance of the Product; (v) Seller shall use individually manufactured Products provided to Viavi by a supplier with sufficient experience and skill to perform such services, and with due diligence and in a manner consistent with industry standards applied to the performance of similar services; (vi) any Products provided to Viavi shall not infringe or constitute an infringement or misappropriation of any copyright, patent, trademark, service mark, trade name, trade secret or similar proprietary right conferred by contract, statute, common law or any other law hereunder; (vii) Seller shall adhere to any Viavi quality policy, procedure, or control requirements; and (viii) Seller has not and will not act unethically, and Seller has not offered or given, and will not offer or give, any employee, agent or representative of Viavi or any government, any gift or gratuity with the intent of securing business from, or favorable treatment by, Viavi. If Products contain third party warranties, Seller hereby assigns such warranties to Viavi and its customers and upon request shall provide details of such warranties to Viavi and its customers. Products failing to comply with applicable warranties will be, at Viavi's option, (i) returned for a full refund or credit of amounts paid by Viavi for the defective Product, (ii) repaired, (iii) replaced or (iv) re-performed by Seller, at no cost or expense to Viavi or its customers and with shipping and transportation costs and risk of loss and damage in transit borne by Seller. Repaired and replaced Products shall be warranted as set forth in this clause. The above warranties, together with Seller's service warranties and guarantees, if any, survive inspection, test, acceptance of and payment for the Products and ensue to Viavi, its customers and their respective successors and assigns.
10. Epidemic Failure: An Epidemic Failure shall be deemed to have occurred where more than two percent (2%) of any Product sold to Viavi fails in substantially the same manner within a thirty (30) day period, or within a twelve (12) month period after the Products are shipped to the delivery location specified by Viavi. In the event of an Epidemic Failure, Seller shall, at its cost, provide service as required by Viavi and, if deemed necessary by Viavi, at Seller's cost, implement an engineering change to correct the problem giving rise to the Epidemic Failure. Viavi shall have the right to reject further deliveries of such Product without liability. In addition, without limitation, in relation to all affected Products, (whether already sold to Viavi customers or stocked at Viavi or authorized subcontractor facilities and, whether or not such Products have in fact failed), as directed by Viavi at its option and sole discretion, Seller shall pay Viavi a full refund or credit, perform repair services, and/or provide replacement Products, all at Seller's cost. Seller shall notify Viavi promptly in writing of any anticipated capacity shortage, and shall provide Viavi with timely updates during any capacity shortage.

12. Right Of Entry: Viavi may, with two (2) business days prior notice to Seller, enter the premises of Seller during Seller's normal business hours to verify Seller's compliance with Section 3 (Pricing Commitment), to perform an inspection or quality review with respect to performance of the work and/or provision of Products pursuant to a PO, and/or assess conformance to the Electronics Industry Citizenship Coalition (EICC) Code of Conduct.

13. Onsite visits: If providing services to Viavi, Seller shall comply and ensure that its employees and agents comply with the information that is provided by Seller to Viavi on supplier qualification questionnaires and or any other questionnaires or forms established by Viavi for non-employees as advised from time to time by Viavi, including without limitation, environmental, health and safety rules, security rules and regulations whenever Seller is in or upon Viavi premises.

14. Compliance: Seller, and the Products, shall comply with all local, state, and federal laws, and the Export Administration Regulations, the International Traffic in Arms Regulations and OFAC Regulations that may be applicable to Viavi, and will not refer any such contractor or service provider individual who is a citizen or permanent resident of any of these countries for which an export license is required. Seller will indemnify, defend and hold harmless Viavi against any and all liability in the event that Seller provides to Viavi any individual who is a citizen or permanent resident of any of the countries for which an export license is required.

16. Export Controls for Services provided by Employees and/or Contractors of Seller: Seller will screen all potential individual contractors and/or service providers in accordance with the Deemed Export Requirements issued pursuant to US Export Administration Regulations, the International Traffic in Arms Regulations and OFAC Regulations that may be applicable to Viavi, and will not refer any such contractor or service provider individual who is a citizen or permanent resident of any of these countries for which an export license is required. Seller agrees that it will not assign any unprotected foreign national to work on Viavi projects unless Seller has: (A) identified the unprotected foreign national to Viavi; (B) provided Viavi with all information necessary for Viavi to make an export licensing determination; and (C) has received from Viavi permission to assign such unprotected foreign national to Viavi's work. For the purposes of this section, the term “foreign national” is defined as anyone who is not a citizen of the United States, a lawful permanent resident of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3).

18. Indemnity: Seller agrees to indemnify and hold harmless Viavi, its affiliates and customers and their respective directors, officers, employees, agents, subcontractors and other representatives (for purposes of this Section 18, collectively “Viavi”) from any and all loss, damage, liability, cost (including reasonable solicitors’ fees), penalty or any other expense of whatever nature (collectively “Claims”) arising out of: (i) any act or omission of Seller (including negligence) directly or indirectly relating to the PO, the use or sale of the Products, whether alone or in combination, or work performed pursuant to the PO; and/or (ii) Seller’s breach of this Agreement. The foregoing includes without limitation any and all claims, actions or proceedings for breach of contract, in tort (including negligence), intellectual property infringement, any statutory, regulatory or other legal claims, and/or claims for bodily injury (including death) and/or damage to property.

19. Insurance: Seller shall, at its own expense, at all times during any period of performing work, either at Viavi or elsewhere, provide and maintain in effect those insurance policies and minimum limits of coverage designated below (all dollar figures in United States currency) with insurance companies authorized to do business in the state in which work is being performed, with an A.M. Best’s Insurance Rating at a minimum of A- with a financial size category of Class VII or better, or as otherwise acceptable to Viavi:

- Worker’s Compensation Insurance as required by the applicable law of the state in which the work is being performed, including Employer’s liability with a minimum limit of One Million Dollars (USD $1,000,000) for bodily injury by accident, and One Million Dollars (USD $1,000,000) for property damage by accident.
- Commercial General Liability Insurance maintained on an occurrence basis covering bodily injury and property damage liability, personal and advertising injury liability, products completed operations and contractual liability for bodily injury, property damage, personal injury and advertising injury, with minimum coverage of One Million Dollars (USD $1,000,000) per occurrence and Two Million Dollars (USD $2,000,000) in the aggregate.
- Business Automobile Liability Insurance covering bodily injury and property damage liability, including coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of One Million Dollars (USD $1,000,000) per occurrence.
- Professional Liability Insurance for errors and omissions with a minimum limit of Five Million Dollars (USD $5,000,000) per occurrence or per claim and Five Million Dollars (USD $5,000,000) in the aggregate.
- Umbrella and/or Excess Liability Insurance on an occurrence basis with limits not less than One Million Dollars (USD $1,000,000) for bodily injury and personal injury liability and property damage liability, and a combined single limit of Five Million Dollars (USD $5,000,000) in the aggregate.
- Seller will screen all potential individual contractors and/or service providers in accordance with the Deemed Export Requirements issued pursuant to US Export Administration Regulations, the International Traffic in Arms Regulations and OFAC Regulations that may be applicable to Viavi, and will not refer any such contractor or service provider individual who is a citizen or permanent resident of any of these countries for which an export license is required. Seller agrees that it will not assign any unprotected foreign national to work on Viavi projects unless Seller has: (A) identified the unprotected foreign national to Viavi; (B) provided Viavi with all information necessary for Viavi to make an export licensing determination; and (C) has received from Viavi permission to assign such unprotected foreign national to Viavi’s work. For the purposes of this section, the term “foreign national” is defined as anyone who is not a citizen of the United States, a lawful permanent resident of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3).

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in the event of cancellation, non-renewal or reduction in coverage that causes Seller to no longer be adequately insured with the limits of the requirements set forth in this Section 19. Nothing in this Section 19 shall be deemed to prejudice Seller from selecting a new insurance carrier or carriers or obtaining new or amended policies at any time, as long as the above insurance coverage is maintained. Seller will furnish Viavi with applicable certificates of insurance from time to time upon reasonable request.

20. Confidential Information: Seller acknowledges that certain information provided by Viavi in connection with the PO is confidential in nature. Confidential Information means any business, marketing, technical, scientific, financial or other information, specifications, designs, plans, drawings, software, prototypes or process techniques of Viavi, an affiliate or other third party, which at the time of disclosure, is reasonably understood to be confidential in nature, including the identity of the parties and the fact that the parties are in contact with each other (collectively, "Confidential Information"). Seller shall hold Confidential Information in confidence and shall not disclose Confidential Information to third parties. Confidential Information does not include information that: (i) is or becomes publicly available through no fault of the Seller; (ii) is lawfully disclosed to the Seller by a third party who is not under any obligations of confidence; (iii) Seller can establish was known to the Seller prior to the date of disclosure by Viavi; (iv) is required by law to be disclosed; or (v) Seller can establish was developed independently by the Seller without the use of Viavi's Confidential Information. Seller may only use Confidential Information for the purpose of fulfilling its obligations under the PO. Seller shall, upon written request by Viavi, promptly return and/or destroy and certify as destroyed all Confidential Information in its possession or control, as well as all material which incorporates any Confidential Information. Seller shall not disclose, without the prior written consent of Viavi, any Confidential Information to any third party other than its employees and contractors under similar obligations of confidence who have a need to know such information. Seller shall assume full responsibility and shall indemnify and hold Viavi harmless for the unauthorized disclosure or use of any Confidential Information by its employees, contractors or any other third party to whom Seller discloses Confidential Information. All obligations of confidentiality and non-disclosure set forth in the PO survive, without limitation, the expiration or earlier termination of the PO. Where the parties have entered into a separate non-disclosure agreement which covers the subject-matter of the PO, that non-disclosure agreement, to the extent applicable, shall supersede this Section.

21. No Publicity: Seller shall not use the Viavi name, trademarks, or the name or marks of any of its affiliates in any public statement or publicize the fact the parties are doing business, without the prior written consent of Viavi.

22. Ownership: In exchange for the consideration provided to Seller hereunder Viavi shall: (i) have free title to, and all ownership interest in the Products and any reports or other deliverables provided by Seller in connection with the PO; and (ii) own all intellectual property rights in any software, specifications, inventions (whether patentable or not) and processes created for Viavi under the PO, including the copyright in any original works fixed in any tangible medium of expression which were created for Viavi. For Seller-owned or licensed intellectual property in any deliverables delivered hereunder, Seller hereby grants to Viavi a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to such intellectual property to use, make, have made, sell, import, modify, reproduce, translate, distribute such deliverables, in whole or in part, internally and/or to any third party. In respect of any intellectual property vested in a third party, Seller shall obtain from such third party (at no cost to Viavi or its customers) such permission, waiver or license as may be necessary to use such deliverables as described herein. Seller shall furnish and execute any additional documents as Viavi may require to establish ownership by Viavi of the copyright, patent or any other rights or interests resulting from the performance of the PO. All designs, tools, patterns, drawings, information, equipment or other material furnished by Viavi hereunder shall be used only in the performance of Seller's obligations hereunder. All such material, and any rights thereto, shall remain the property of Viavi, be kept confidential by Seller, and shall be returned to Viavi in the form of finished parts or unused material. Seller bears all responsibility for loss, damage or destruction while property is in its possession or control. Property furnished by Viavi is provided strictly “as is” with no warranty whatsoever.

23. Trade-Marks And Logos: Seller shall remove or obliterate any Identification prior to any use or disposition of any material rejected or not purchased by Viavi.

"Identification" means any semblance of any trade name, trademark, service mark, insigne, symbol, logo, or any other designation of Viavi or its affiliates.