

# Los Rios Community College District

**PURCHASE ORDER NO 1114569A**

Purchasing: (916)568-3071 \* FAX (916) 568-3145  
LRCCDpurchase@losrios.edu

Accounting Ops: (916)568-3065 \* FAX (916) 286-3636  
Acctg-ops@losrios.edu

**PLEASE SEE TERMS AND CONDITIONS APPENDED TO THIS PO**

<b>Date</b> 03/23/2021	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> NET 30	<b>Freight Terms</b> Shipping Point	<b>Ship Via</b> Best Method
<b>Reference:</b> 1028946 GRAHLMANA HANEYB HANEYB	<b>Location / Dept</b> ADMN	

**Supplier:** 0000006424  
AMAZON.COM  
BILLING DEPARTMENT  
P O BOX 80463  
SEATTLE WA 98108

**email:**

**Ship To:** FOLSOM LAKE COLLEGE  
RECEIVING  
10 COLLEGE PARKWAY  
FOLSOM CA 95630-6798  
United States

**Bill To:** LRCCD  
Invoice to: acctg-ops@losrios.edu  
1919 Spanos Court  
Sacramento CA 95825-3981  
United States

**Tax Exempt?** N

Line-Sch	Item/Description	Quantity UOM	PO Price	Extended Amt	Due Date
1- 1	DIAMOND KINETICS SWINGTRACKER SENSOR (DKST02) SOLD BY DIAMOND KINETICS	3.00 EA	99.99	299.97	03/23/2021

COMPLETE DESCRIPTION:  
SWING TRACKER: Can be used for baseball and softball (iOS ONLY)  
COMPARE: Real-time, national swing comparison databases from 8U through Professional for each metric  
ANALYZE: Precise 3D swing plane/swing path model and video capture mode & each syncs with the swing metrics you choose  
DOWNLOAD: Dedicated iPhone and iPad apps for each sport (Requires iOS 13 or later)  
SUBSCRIBE: \* Purchase of a Swing Tracker Sensor Includes a Free 14-day Premium Hitter Subscription.

AMAZON ORDER PLACED 03-23-2021 (BH)

ORDER# 112-1646240-3535401 Guaranteed Delivery by March 25, 2021

03-23-21 RE-ISSUE PO 1114569A TO AMAZON.COM (DK STORE) PER ATTACHED CHANGE ORDER  
CANCELED PO 0001114569 TO DIAMON KINETICS INC. VENDOR T&Cs NOT APPROVED.

<b>Sub Total Amount</b>	299.97
<b>Sales Tax Amount</b>	23.25
<b>Total PO Amount</b>	323.22

BU      Acct   Fd    Org                      Prog   Sub    Proj                      Amount                      BYear

All shipments, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment.

**Authorized Signature**

Notice to vendor: You are responsible for delivering good and delivery documents to the Receiving Department at the site. Failure to so do will delay payment processing. Vendor is responsible for obtaining verification of delivery by authorized Receiving Room personnel. Receipt of good by other parties and failure to obtain authorized signatures may also delay payment. NOTE: PAYMENT TERMS NET 30  
MATERIAL SAFETY DATA SHEETS (MSDS) must be provided with the delivery of product as required by law.

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AMAZON.COM  
BILLING DEPARTMENT  
P O BOX 80463  
SEATTLE WA 98108

**email:**

Date	Revision	Page
03/23/2021		2
Payment Terms	Freight Terms	Ship Via
NET 30	Shipping Point	Best Method
Reference:	Location / Dept	
1028946 GRAHLMANA HANEYB HANEYB	ADMN	

**Ship To:** FOLSOM LAKE COLLEGE  
RECEIVING  
10 COLLEGE PARKWAY  
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United States

**Bill To:** LRCCD  
Invoice to: acctg-ops@losrios.edu  
1919 Spanos Court  
Sacramento CA 95825-3981  
United States

**Tax Exempt?** N

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
GENFD 4300 12	FL.VI.KINE 08700 00000 700P	323.22	2021			

Verification of this purchase order can be made using the Los Rios Community College District web site listed below.  
If you have any questions, please contact the Purchasing Office at (916)568-3071.

<http://www.losrios.edu/purchasing/povalidation>

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**PURCHASE ORDER NO 0001114569**  
**CANCELED PO**

<b>Date</b>	<b>Revision</b>	<b>Page</b>
03/22/2021	1 - 03/23/2021	1
<b>Payment Terms</b>	<b>Freight Terms</b>	<b>Ship Via</b>
NET 30	Shipping Point	Best Method
<b>Reference:</b>		
1028946 GRAHLMANA HANEYB		

**PLEASE SEE TERMS AND CONDITIONS APPENDED TO THIS PO**

**Supplier:** 0000045861  
DIAMOND KINETICS INC  
700 RIVER AVENUE SUITE 100  
PITTSBURGH PA 15212

**Phone:** (412) 223-5341

**email:** support@diamondkinetics.com

**Ship To:** FOLSOM LAKE COLLEGE  
RECEIVING  
10 COLLEGE PARKWAY  
FOLSOM CA 95630-6798  
United States

**Bill To:** LRCCD  
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1919 Spanos Court  
Sacramento CA 95825-3981  
United States

<b>Tax Exempt?</b>	<b>N</b>	<b>Use Tax Applicable:</b>	<b>Y</b>				
<b>Line-Sch</b>		<b>Item/Description</b>		<b>Quantity UOM</b>	<b>PO Price</b>	<b>Extended Amt</b>	<b>Due Date</b>
1- 1		SWINGTRACKER SENSOR; DKST02		3.00 EA	75.00	0.00	<b>CANCEL</b>
2- 1		FREIGHT		1.00 EA	15.00	0.00	<b>CANCEL</b>

PRICING PER SALES REP, KYLE BENNETT

ATTENTION VENDORS:  
PLEASE BE ADVISED THAT FOLSOM LAKE COLLEGE RECEIVING HOURS ARE CURRENTLY MONDAY - THURSDAY 10:00AM - 2:00PM UNTIL FURTHER NOTICE.

SOFTBALL; ATTN: AMBER GRAHLMAN

03-23-21 CANCEL PO 0001114569 TO DIAMON KINETICS INC. VENDOR T&Cs NOT APPROVED.  
RE-ISSUE PO 1114569A TO AMAZON.COM (DK STORE) PER ATTACHED EMAIL STREAM.

<b>Sub Total Amount</b>	0.00
<b>Sales Tax Amount</b>	0.00
<b>Total PO Amount</b>	0.00

<u>BU</u>	<u>Acct</u>	<u>Fd</u>	<u>Org</u>	<u>Prog</u>	<u>Sub</u>	<u>Proj</u>	<u>Amount</u>	<u>BYear</u>
							0.00	2021

0001028946CHAVEZA25-FEB-2021

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03/22/2021	1 - 03/23/2021	2
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**Phone:** (412) 223-5341

**email:** support@diamondkinetics.com

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**Tax Exempt?** N **Use Tax Applicable:** Y

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
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# Requisition

**Supplier:** DIAMOND KINETICS INC  
700 RIVER AVENUE SUITE 100  
PITTSBURGH PA 15212  
United States

0000045861

**Phone:** (412) 223-5341  
**email:** support@diamondkinetics.com

**Ship To:** RECEIVING  
10 COLLEGE PARKWAY  
FOLSOM CA 95630-6798

<b>Business Unit:</b>		<b>GENFD</b>	<b>OPEN</b>
Req ID:	Date	Page	
0001028946	02/24/2021	1	
Requisition Name: DIAMOND KINETICS			
Requester Amber Grahlman			
Requester Signature			
Buyer: Brenda Haney			
Approved:			
Entered By: M.J		24-FEB-2021	

Line-Schd	Description	Quantity	UOM	Price	Extended Amt Due Date
1-1	SWINGTRACKER SENSOR; DKST02	3	EA	75.00	225.00 03/10/2021
2-1	FREIGHT	1	EA	15.00	15.00 03/10/2021

240.00 Sub-total  
17.44 Est. tax

Total Requisition Amount: 257.44

SOFTBALL; ATTN: AMBER GRAHLMAN

<u>BU</u>	<u>Acct</u>	<u>Fd</u>	<u>Org</u>	<u>Prog</u>	<u>Sub</u>	<u>Proj</u>	<u>Amount</u>
GENFD	4300	12	FL.VI.KINE	08700	00000	700P	240.00

## Purchases Charged to Catagorical Programs, Grants or Special Project.

Program Name: LOTTERY  
Project Grant: 700P  
Program Director: MATT WRIGHT  
Program Goal: INSTRUCTIONAL SUPPLY

Approval Signature

Approval Signature

Approval Signature

## **Diamond Kinetics Wholesale Agreement**

Diamond Kinetics, Inc., a Pennsylvania corporation (the "Company"), has developed the *SwingTracker*® sensor and *PitchTracker*™ 'Smart' ball products and related software applications. The undersigned customer (the "Customer") hereby agrees to the wholesale account terms and conditions set forth in this Agreement.

### **CUSTOMER INFORMATION:**

**Customer Name:** Folsom Lake College Softball **DK Representative:** Kyle Bennett

#### **Customer & Designated Employee Contact:**

**Name:** Amber Grahlman **Title:** Head Softball Coach

**Billing Address:** 10 College Parkway **City, State ZIP:** Folsom, CA 95630

**Phone:** 310-497-0133 **E-Mail:** GrahlmA@flc.losrios.edu

**Shipping Address:** \_\_\_\_\_ **City, State ZIP:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Shipping Notes:** Shipping address is same as billing unless noted.

**ORDER FORM**

Product #	Product Description ("Products")	Quantity	Price per Unit	Subtotal	Deliv D
DKST02	<i>SwingTracker</i> sensor	3	\$75.00	\$225.00	
DKPT01	<i>PitchTracker 'Smart'</i> baseball				
DKPT05	<i>PitchTracker 'Smart'</i> softball				ASAP
Service #	Service Description ("Services")	Duration (months)	Quantity	Price per Subscription	Start
DKPH	<i>Premium Hitter</i> player subscription			\$	
DKPP	<i>Premium Pitcher</i> player subscription				
Other					

Subtotal product/service charges:	\$225.00
Shipping charge:	\$15.00
PA Sales Tax (if applicable):	N/A
<b>Total Purchase Price:</b>	<b>\$240.00</b>

**PAYMENT TERMS**

Wholesale Customer shall pay the Company the aggregate purchase price (the "Purchase Price") for the products and services ordered prior to the "Delivery/Start" dates, as set forth in this Agreement. All sales are final except the Company may allow, in its sole discretion, the return of unopened, unused products plus a \$10.00 per unit restocking fee and payment of return shipping.

**Payment Method:**

☐ Credit Card via electronic payment link

☐ Invoice/Check

Wholesale Customers may subsequently purchase additional Products and Services throughout the Term at the then current wholesale price by notifying the Company in writing and indicating the desired payment method.

**REQUIREMENTS**


**For Subscriptions:** Customer is solely responsible for providing the roster of names and associated information, as requested by the Company, of the End-Users that will receive access to the Services and communicating such to those End-Users. Customers may send rosters directly to: [rosters@diamondkinetics.com](mailto:rosters@diamondkinetics.com).

**PRODUCT WARRANTIES**

Diamond Kinetics provides end-user warranties and they may be reviewed at: [diamondkinetics.com/policies-info](http://diamondkinetics.com/policies-info) or by requesting mail or phone: Diamond Kinetics, 700 River Avenue, Pittsburgh, PA. 15212. (412)223-5341.

Accepted and Agreed,

**CUST DIAMOND KINETICS, INC**  
**OMER**

By: _____	By:  _____
Title: _____	Title: Chief Commercial Officer
Date: _____	Date: 2/23/2021

### **Standard Terms and Conditions**

1. **Applicability.** These terms and conditions (these "Terms") govern the purchase, sale and use of the Products (the "Goods") and Services (the "Services"), whether purchased separately or together as Packages and identified on the Order Form to which these Terms are attached (the "Order Form"). The Order Form and these Terms and Conditions comprise the entire agreement (the "Agreement") between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The terms of this Agreement prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms.

2. **Wholesale Program.** As part of the Wholesale Program, Customer shall purchase Company Goods and Services and then will sell, or provide as part of services provided by Customer, Company Goods and Services to End-Users.

3. **Delivery of Goods and Services.** The Goods will be delivered within a reasonable time after receipt of Customer's order and payment. The Company hereby agrees to use commercially reasonable efforts and to devote commercially reasonable time to provide to the Customer and to the End-Users access to the Services. The Company grants to the Customer and, as applicable, the End-User a non-exclusive, non-transferable license to the Company Technology solely for Customer's and End-User's use of the Goods and Services.

4. **Non-Exclusive Right to Sell.**

- a. The Company hereby grants to Customer a limited, non-transferable, non-sublicensable, nonexclusive right to market, demonstrate and sell (with the exception of the Company Technology which is licensed as provided above) the Products and Services to End-Users within the United States and Canada (collectively, the "**Authorized Territory**").
- b. The non-exclusive right to sell may include, in Company's sole discretion, access to an online store created by Company to facilitate online sales of Products and Services by Customer provided Customer does not price Products above the then published Manufacturer's Suggested Retail Price less applicable shipping costs.
- c. Customer acknowledges and agrees that, prior to the expiration of the 12-month subscription to the Services, it may not, and Company shall not have any obligation to, transfer a subscription to the Services to another End-User upon termination of the previous End-User's use of the Services or upon termination of the previous End-User's affiliation with the Customer. Customer agrees to obtain the necessary authorizations and agreements from End-Users to ensure such End-User's end use is in accordance with the terms of this Agreement. As part of the End-User onboarding process, the Company and End-Users may enter into a separate agreement that will govern the End-User's use of the Goods and Services and the Company reserves the right to enforce such



agreement directly with the End-User. Nothing in this Agreement shall be construed as limiting in any manner the Company's marketing or distribution activities, directly or indirectly, with respect to the Goods or Services, or similar goods or services. The Company reserves the right to market and sell the Goods and Services through its own employees and representatives within the Authorized Territory.

5. **Terms and Conditions of End-User Use.** Customer represents and warrants that it has End-User's permission to share End-User's name, age, and email ("Personal Information") with Company for the purpose of offering Company Goods and Services. In the event an End-User is aged 12 or under, Customer represents and warrants that it has the permission of the parent or legal guardian of End-User to share such information. Customer acknowledges and agrees that each End-User and any user of the Services will be subject to the Company's (i) Terms of Use, which are available at [www.diamondkinetics.com/terms-of-use](http://www.diamondkinetics.com/terms-of-use) (the "**Terms of Use**") and (ii) Privacy Policy, which is available at [www.diamondkinetics.com/privacy/](http://www.diamondkinetics.com/privacy/) (the "**Privacy Policy**"). Each End-User will be subject to an End User License Agreement and with respect to any End-User, the Company reserves the right, without notice, to deny, suspend, limit or terminate access to the Services or any portion thereof, whether for security purposes, for violation of the Terms of Use or for any other reason, including non-payment by Customer.

6. **Intellectual Property.** The Company and its licensors retain all ownership, intellectual property rights and all other right, title and interest in and to the Services and the software and technology underlying the Goods and Services, and in all copies, improvements, enhancements, modifications and derivative works thereof, including without limitation, all patent, copyright, trade secret and trademark rights (collectively, the "Company Technology"). The Company reserves all rights not expressly granted to Customer hereunder. To the extent Customer and/or any of Customer's authorized end-users (the "End-Users") acquires any rights to the Company Technology or Company documentation, Customer and End-User hereby assigns all of those rights to the Company. Company reserves the right, from time to time, to improve, add to, remove or otherwise modify the functionality, features and services offered as part of the Services.

7. **Prohibited Conduct.** Customer shall not hold itself out as an agent of the Company with authority apart from the authority expressly granted under the terms of this Agreement. Customer shall have no express or implied authority to assume or create any obligation on behalf of the Company or make any representations, warranties or guarantees on behalf of the Company. Customer shall not reverse engineer, de-compile, disassemble or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the Goods or Services nor shall Customer modify, adapt, translate or create derivative works based on the Goods or Services. Customer shall comply with all applicable local, state, federal, foreign and other laws and regulations. Customer shall be strictly liable for, and shall defend, indemnify and hold the Company harmless from and against, any losses, claims or other damages it may incur as a result of any such prohibited conduct by Customer.

8. **Support.** Reasonable support regarding the Goods and Services will be available between the hours of 9:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday, excluding United States federal holidays.

9. **Rights in Data.** Subject to the Terms of Use and the Privacy Policy, the Company shall hold all right, title and interest in and to the End-User Data. As used herein, "End-User Data" shall mean all data provided by Customer and End-Users to the Company via the Goods and Services (other than personal financial information). Additional information regarding the Company's use and retention of End-User Data may be found in the Privacy Policy

10. **No Warranty.** EXCEPT AS SET FORTH IN ANY END USER AGREEMENT, THE GOODS AND SERVICES ARE PROVIDED "AS-IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS DISCLAIM ALL WARRANTIES, ORAL, WRITTEN EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THE GOODS AND SERVICES AND CUSTOMER'S AND ITS END-USERS' USE THEREOF, INCLUDING, WITHOUT LIMITATION, THEIR QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ANY UNINTERRUPTED OR ERROR-FREE OPERATION OR OTHERWISE, OR ANY LIABILITY IN NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE AND IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER OR THE END-USERS FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE GOODS OR SERVICES. THE

COMPANY MAKES NO REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR COMPLETENESS OF THE SERVICES OR THE CONTENT OF THE SERVICES.

**11. Limitation of Liability.**

- a. The Company's liability, whether in contract, tort or otherwise arising out of or in connection with the Goods, Services or this Agreement shall not exceed the aggregate purchase price paid by Customer for such Goods and Services.
- b. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE GOODS OR SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE GOODS OR SERVICES, OR ANY ACTS OR OMISSIONS OF CUSTOMER WITH RESPECT TO THE END-USERS, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Indemnification.** Customer shall indemnify and hold the Company harmless from any and all losses, claims, damages or lawsuits (including reasonable attorneys' fees) incurred by Company arising out of the negligent or wrongful acts or omissions of Customer, its employees or agents, or the breach by Customer of any provision of this Agreement.

13. **Term and Termination.** This Agreement shall have an initial 12-month term ("Term") which shall be automatically renewed for successive 12-month periods and can be terminated at any time by Company or Customer upon seven (7) days' prior written notice. In addition to any remedies that may be provided under this Agreement, the Company may terminate this Agreement and, if applicable, the End-Users' access to the Services with immediate effect upon written notice to Customer, if Customer (a) fails to pay any amount when due under this Agreement and such failure continues for five (5) days after Customer's receipt of written notice of nonpayment, or (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part.

14. **Confidential Information.** All non-public, confidential or proprietary information of the Company, including but not limited to specifications, designs, plans, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by the Company to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement (including this Agreement itself and its pricing and terms) is Company's Confidential Information. Company's Confidential Information shall be solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by the Company in writing. Upon Company's request, Customer shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third-party legally entitled to disclose such Information.

15. **Trademarks.** Subject to all the terms and conditions of this Agreement, Company grants Customer a nontransferable, nonsublicensable, royalty-free, non-exclusive worldwide license to use the trademarks, service marks, tradenames or other designation associated with Goods and/or Services ("Trademarks") only in connection with Customer's use, marketing, promotion and/or distribution of the Goods and/or Services to End-Users and potential end-users. Customer shall cease using any materials containing any Trademarks if requested to do so by the Company. All use of the Trademarks shall inure to the benefit of the Company and its Licensors.

16. **Independent Contractor.** Customer is an independent contractor, and nothing contained herein shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other, (b) constitute the parties as partners, a joint venture, co-owners or otherwise, or (iii) allow Customer to create or assume any obligation on behalf of the Company for any purpose whatsoever. Customer, in its capacity as a reseller (if applicable) and/ or sales representative (if applicable), is not an employee of the Company and is not entitled to any

employee benefits. Customer shall be responsible for paying all income taxes and other taxes charged to Customer on amounts earned under the Agreement. Customer will be responsible, without reimbursement by the Company, for payment of any expenses incurred in the course of performing its duties under the Agreement.

17. **Waiver.** No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. **Assignment.** Neither this Agreement nor any of the rights or obligations of either party under this Agreement shall be assigned or delegated by such party without the written consent of the other party, and any attempted assignment or delegation in violation of this Agreement shall be void. Notwithstanding the foregoing, this Agreement shall be assigned or transferred by Manufacturer to a successor-in-interest or other acquirer by way of a merger or sale of all or substantially all of Manufacturer assets or business or any sale, license or other transfer or disposition of the Products (with notice to, but without the consent of, Customer) and Manufacturer shall cause such successor or acquirer to assume all the liabilities and obligations of Manufacturer under this Agreement.

19. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision thereof or of any other state. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States or the courts of the Commonwealth of Pennsylvania in each case located in Pittsburgh, Pennsylvania, and Customer irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. **Amendment and Modification.** This Agreement may only be amended or modified in a writing signed by an authorized representative of each party.

21. **Successors and Assigns.** This Agreement will bind each party, its successors and permitted assigns.

22. **Severability.** In the event that any provision of this Agreement shall be adjudicated to be void, illegal, invalid, or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and each of such remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law, unless a party demonstrates by a preponderance of the evidence that the invalidated provision was an essential economic term of the Agreement.

23. **Relationship of the Parties.** Nothing in this Agreement shall be construed to constitute either party as a partner, joint venturer, agent or other representative of the other. Each party is an independent entity retaining complete control over, and complete responsibility for, its operations and employees.

24. **Survival.** The provisions of this Agreement shall survive the cancellation, expiration or termination of this Agreement to the extent necessary for the benefit and enforcement thereof.

