

Supplier Terms and Conditions



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1. Applicability.

The purchase and sale of Goods and/or Services pursuant to a Purchase Order (including any repaired or replacement Goods provided, or any Services performed, by Supplier thereunder) are subject to the terms and conditions of a written agreement signed by both Buyer and Supplier under which Buyer submits a Purchase Order, or, in the absence of such signed written agreement, the Terms (as defined in Section 2 below). To the extent there is a conflict between the terms of a written agreement signed by both parties or the Terms, the terms of the written agreement shall govern.

2. Definitions.

"Buyer"

Excelsior Alchemy, Inc. or its affiliate indicated on the Purchase Order

"Goods"

The raw materials, equipment, finished goods, parts, components, articles, or other items covered by the Purchase Order, including any Work Product (as defined herein) and other deliverables (if any) delivered in connection with the performance of the Services

"Purchase Order"

The purchase order issued by Buyer to Supplier

"Services"

The services, work or other performance obligations covered by the Purchase Order

"Supplier"

The individual or entity providing the Goods and/or Services covered by the Purchase Order

"Terms"

These Additional Instructions, Terms & Conditions for Purchases, which may be amended from time to time

3. Acceptance.

The Purchase Order is an offer by Buyer to purchase the Goods and/or Services (as applicable) from Supplier in accordance with and subject to the terms herein and therein. The Purchase Order is not binding on Buyer until it is accepted by Supplier. Supplier will be deemed to have accepted the Purchase Order when it (i) sends Buyer notice of acceptance in writing, (ii) starts to perform the Services in accordance with the terms of the Purchase Order, and/or (iii) delivers any or all of the Goods covered by

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the Purchase Order, whichever occurs first. Buyer may withdraw the Purchase Order at any time before it is accepted by Supplier. No contract will exist except herein provided.

Supplier's acceptance is expressly limited to these Terms. Any proposal, statement of work, quote, invoice, acknowledgement or other communication issued by Supplier in connection with, or otherwise incorporated by reference into, the Purchase Order will be for the purposes of describing in greater detail the Goods and/or Services (as applicable) to be provided and/or for record and accounting purposes only, and any terms or conditions set forth in such communication will not apply to the Purchase Order and will not be considered to be Supplier's exceptions to these Terms. Any additional or different terms proposed by Supplier (including, without limitation, any terms contained in any document incorporated by reference into the Purchase Order) are objected to and rejected and will be deemed a material alteration hereof, unless expressly assented to in writing by Buyer. Furthermore, Buyer will not be bound by, any "disclaimers" or "click to approve" terms or conditions now or hereafter contained in any website used by Buyer in connection with the Goods and/or Services (as applicable) or the Purchase Order.

The Purchase Order, together with any documents incorporated herein and therein by reference, constitutes the sole and entire agreement of the parties with respect to the purchase and sale of the Goods and/or Services (as applicable), and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order.

4. Delivery Date.

Supplier will deliver the Goods and/or perform the Services (as applicable) on the date(s) specified in the Purchase Order (the "Delivery Date"). If no delivery date is specified, Supplier will deliver the Goods and/or Services (as applicable) within thirty (30) days of Supplier's receipt of the Purchase Order (which date will be the Delivery Date). Timely delivery of the Goods and/or Services (as applicable) is of the essence. If Supplier fails to deliver the Goods and/or Services (as applicable) in full on the Delivery Date, Buyer may terminate the Purchase Order immediately by providing written notice to Supplier and Supplier will indemnify Buyer and its affiliates and their respective current, future and former officers, employees, directors, agents, customers, successors and assigns (collectively, "Buyer Indemnitees") against any claims, demands, causes of action, losses, damages, direct and indirect costs and expenses or other liability (including costs of product recall), including reasonable attorneys' fees, (collectively, "Losses") directly attributable to Supplier's failure to deliver the Goods and/or Services (as applicable) on the Delivery Date. In addition, Buyer has the right to return any Goods delivered prior to the Delivery Date at Supplier's expense and Supplier will redeliver such Goods on the Delivery Date.

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5. Delivery Location; Shipping Terms.

All Goods will be delivered to, and all Services will be performed at, the address specified in the Purchase Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer.

Delivery of the Goods (if any) covered by the Purchase Order will be made in accordance with the delivery terms specified in the Purchase Order.

Buyers carrier information is as follows:

Freight/BOL: MainFreight website (will need to request a log-in and password), Email phx.domestic@mainfreightusa.com, or contact Michelle Grabek (602.383.7227), or any freight coordinator (480.353.9889).

Small Parcel: UPS account #86947W. NOTE - when scheduling UPS, please include the shipment value in order to insure it 100%.

When Goods are delivered to a carrier for transportation, Supplier will give prompt written notice to Buyer and provide Buyer all documents necessary to release the Goods to Buyer.

The "PO Number" indicated in the Purchase Order must appear on all applicable shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

6. Title; Risk of Loss

If supplier chooses to use its own carrier then title to the Goods covered by the Purchase Order (if any) passes to Buyer upon delivery of the Goods to the Delivery Location. Delivery of the Goods is not complete until such Goods have actually been received and accepted by Buyer. Supplier bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

7. Packaging.

All Goods covered by the Purchase Order (if any) must be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide Buyer prior written notice if it requires Buyer to return any packaging materials. Any return of such packaging materials will be made at Supplier's expense.

8. Quantity.

The specific quantity of Goods ordered (if any) must be delivered in full and not be changed without Buyer's written consent. If Supplier delivers more or less than the quantity of Goods ordered, Buyer may reject all or any of the Goods. Any such rejected Goods will be returned to Supplier at Supplier's risk and

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expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods will be adjusted on a pro-rata basis.

9. Quality Requirements

Key Terms

Certificate of Analysis (CofA)

Material Specification Sheet (MSS)

Raw Materials (RM)

Certificate of Compliance (CFC)

Material Safety Data Sheet (MSDS)

Qualification

To fulfil purchase orders for Excelsior Alchemy, Inc. you are agreeing to be part of our qualification procedure which includes:

- 1) Vendor Qualification Questionnaire (www.ExcelsiorAlchemy.com/Supplier-Audit/Form/)
- 2) Agreeing to our Terms and Conditions (this document)
- 3) Providing 3 different 250 gram lots (unless otherwise specified or agreed) with Certificate of Analysis (CofA) for vendor qualification testing (if three lots are not available we will consider you an in process vendor and be under greater scrutiny at incoming)
- 4) Be manufacturing product in an FDA registered cGMP compliant facility and if applicable a certified organic facility.

Quality Requirements

Responsibility for Conformance: By accepting and fulfilling a purchase order and shipping product to buyer, Supplier is agreeing to comply with the buyers Material Specification Sheet (MSS). This document will be provided by our buyer at time of purchase and is available on request at any time. If buyer specifications change we will let Supplier know immediately.

Approving Received Materials: Prior to approving any Raw Material (RM), QA of Excelsior Alchemy will first visually inspect the sample before testing. The sample must have a CofA (Certificate of Compliance (CFC) and/ or Material Safety Data Sheet (MSDS) as applicable) for us to confirm that what we are receiving matches our MSS. Depending on the RM, various physical and/or analytical tests are performed in our laboratory and/or an approved 3rd party lab. All samples are tested for microbial

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contamination. Once the raw materials has met and exceeded our physical and analytical testing, the RM will be approved.

Organic Compliance: Excelsior Alchemy is a certified organic facility. Any RM that has been irradiated, genetically engineered, or contaminated with pesticides /insecticides will be rejected immediately. Any RM that fails to meet the specification on Vendor CofA will be rejected.

Facility Minimum Requirements for all RM's and finished products: Gluten Free (<10 PPM), GMO Free, Pesticide Free, Irradiation Free, Solvent Free (See MSS for exceptions), Free of Excipients and Fillers. RM's that test positive for any of these items will be rejected.

Heavy Metals: We test ALL incoming RM's. If material fail to meet specifications they will be rejected.

Documentation: Seller agrees to provide a Certificate of Analyses with a minimum of

- Manufacturer
- Botanical Name
- Lot Number
- Date of Manufacture
- Date of Expiration
- Microbiology
- Heavy Metals (Lead, Cadmium, Arsenic, Mercury)
- Country of Origin
- Carriers/ Fillers/ Flow Agents/ Excipients/ Additives*

* All carriers, fillers, excipients or other additives (i.e. any other ingredients) used in RM's must be listed on all CofA provided to Excelsior. Even if carriers are NOT used we require it to be listed as "Other Ingredients: NONE". If you are NOT able to provide a CofA with "Other Ingredients: NONE" then we require an Ingredient Declaration and/or Specification document indicating there are no additional ingredients.

Verification of RM Specifications: Seller CofA and Specification Data MUST be provided prior to shipping so our quality department can review and approve. We will test your seller CofA against our provided MSS with a minimum as follows:

- Botanical Identity
- Microbiology
- Heavy Metals
- Assay
- Gluten Free (< 10 ppm)

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ALL RM's must also comply with the following specifications:

- Non GMO (free of)
- Non Irradiated (free of)
- No Pesticides (free of)
- Solvent Free (except water and alcohol)

If the RM fails to meet the specifications it will be rejected and it is the responsibility of the seller to replace or credit EA for the full amount including shipping. EA will provide test data to verify reason for rejection.

If Supplier makes any changes to the ingredient manufacturing process, country of origin, and/ or specifications EA will be immediately notified and provide any documents corresponding to those changes prior to any shipments of the new RM.

Seller agrees to hold a 250 gram retention sample of any RM lots shipped to EA.

If contamination found after receipt or when finished product is manufactured and traced back to Suppliers RM, Supplier is responsible for compensation of losses.

If there is a recall due to contamination of Suppliers ingredient whether recall is initiated by Excelsior Alchemy, Supplier, or Regulatory Authority, Supplier is responsible for compensation of losses including finished product manufacture and any costs incurred with recall.

General Microbial Specifications

Whole Botanical Micro Specification

Aerobic Plate Count	< 750,000 cfu/g
Yeast & Mold	< 1,000 cfu/g
Total Coliform	< 5,000 cfu/g
Enterobacteriaceae	< 5,000 cfu/g
Salmonella	None Detected
E. Coli	None Detected
S. Aureus	None Detected

Botanical Extract Micro Specification

Aerobic Plate Count	< 10,000 cfu/g
Yeast & Mold	< 1,000 cfu/g
Total Coliform	< 100 cfu/g
Enterobacteriaceae	< 100 cfu/g
Salmonella	None Detected
E. Coli	None Detected
S. Aureus	None Detected

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10. No Exclusivity or Minimums.

The Purchase Order is a non-exclusive agreement. Buyer is free to engage others to provide goods or services the same as or similar to the Goods and/or Services (if any) to be provided under the Purchase Order. Buyer is not obligated to any minimum purchase or future purchase obligations under the Purchase Order.

11. Prices; Most Favored Customer.

The price of the Goods and/or Services (as applicable) is the price stated in the Purchase Order (the "Price"). If no Price is specified in the Purchase Order, the Price will be (i) the price set out in Supplier's published price list in force as of the date of the Purchase Order, or (ii) the price last quoted or billed by Supplier at the prevailing market price, whichever is lower.

Supplier warrants that the Prices for the Goods and/or Services (as applicable) to be provided are not less favorable than those currently extended to any other customer for the same or similar goods and services. In the event Supplier reduces its prices for such goods or services prior to accepting the Purchase Order or during the term of performance of the Purchase Order, Supplier agrees to reduce the Prices charged to Buyer accordingly.

Supplier warrants that the Prices shown in the Purchase Order are complete and inclusive of all charges including, without limitation, charges for shipping, packaging, labeling, custom duties, taxes, insurance, storage, boxing and crating.

No additional charges will be added to the Price, nor will any increase in the Price last quoted or charged to Buyer be effective, whether due to increased materials, labor or transportation costs or otherwise, without the prior written consent of Buyer.

12. Payment Terms; Late Fees.

Supplier will not issue an invoice to Buyer prior to delivery of the Goods and/or completion of the Services (as applicable) and then only in accordance with these Terms. All invoices and payments hereunder will be denominated in US dollars, unless otherwise required by Law or agreed to by the parties.

Buyer will pay all properly invoiced amounts due to Supplier in accordance with the payment terms specified in the Purchase Order. If no payment terms are specified, Buyer will pay all properly invoiced amounts due to Supplier within ninety (90) days after Buyer's receipt of such invoice (or within such shorter period of time as required by Law).

Notwithstanding anything to the contrary contained in this Section, Buyer may withhold from payment any amounts disputed by Buyer in good faith. In the event of a payment dispute, Buyer will deliver a written statement to Supplier listing all disputed items and providing a reasonably detailed description of each disputed item. The parties will seek to resolve all such disputes expeditiously and in good faith.

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Supplier will continue performing its obligations under the Purchase Order notwithstanding any such dispute.

Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off or recoup, at any time, any amount owing to it by Supplier against any amount payable by Buyer to Supplier.

If Buyer fails to pay any undisputed amount due to Supplier under the Purchase Order by the applicable payment date, then Buyer will be charged such fees and/or interest (if any) as may be imposed by Law; provided that in no event shall interest accrue at a rate in excess of 2% per annum above the Bank of England's base rate from time to time.

Supplier is responsible for ensuring that invoices are sent to the correct accounts payable address:

Excelsior Alchemy, Inc.
1310 West Drivers Way, Suite 120, Tempe, AZ, 85284
Lynn.Dame@ExcelsiorAlchemy.com

13. Insurance.

Supplier will be solely responsible for maintaining such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by Law or as is the common practice in Supplier's trades or businesses, whichever affords greater coverage. Supplier will provide adequate coverage for any of Buyer's property under the care, custody or control of Supplier. In no event will the foregoing coverage limits affect or limit in any manner Supplier's contractual liability for indemnification under these Terms. Damage to Buyer's premises or manufacturing facilities caused by Supplier's workmen will be repaired to the satisfaction of Buyer at Supplier's expense. Upon request, Supplier will provide Buyer with certificates of insurance or evidence of coverage provided by a carrier, or carriers with an A.M. Best rating of at least A- and stating that Excelsior Alchemy, Inc. and its affiliates are Additional Insured.

14. Compliance with Laws.

In performing its obligations under the Purchase Order, Supplier will comply (and will require all of its employees and other agents involved in Supplier's performance under the Purchase Order to comply) with all applicable federal, state, local and foreign laws (including, without limitation, common law), rules, statutes, regulations, ordinances, and other provisions having the full force and effect of law, and orders, policies, judgments or requirements of any governmental or regulatory authority, including, without limitation, those described in greater detail in these Terms (each a "Law" and collectively, "Laws").

15. Manufacturing Practices.

If Buyer advises Supplier that the Goods (if any) to be delivered under the Purchase Order will be used in finished product that is regulated by the United States Food and Drug Administration and/or any other applicable governmental or regulatory authority, then Supplier will follow all current good manufacturing practices stipulated or promulgated by such governmental or regulatory authority, as the same may be changed from time to time, that are applicable to the manufacture, packaging, labeling, handling, shipping or storage of such Goods. In all cases, Supplier warrants that the Goods (if any) to be delivered under the Purchase Order have been manufactured in compliance with the Fair Labor Standards Act, if applicable, or such comparable foreign Law, and all other applicable Laws.

16. Environmental and Safety Compliance.

Any Goods supplied under the Purchase Order (if any), and the manufacture of such Goods, will comply in all respects with the applicable Laws related to the pollution or protection of the environment or human health and safety, including without limitation, the U.S. Toxic Substances Control Act of 1976, as amended (15 USC § 2601, et seq.), if applicable, or such comparable foreign Law. Supplier warrants it will notify Buyer in advance of any proposed change in the Goods supplied under the Purchase Order which may alter or add to any of the Chemical Abstract Service (CAS) number(s) for raw materials listed in the Specifications. Any such changes must be mutually agreed upon by Buyer and Supplier prior to shipment to Buyer.

Any Goods supplied under the Purchase Order, and the manufacture of such Goods, will comply in all respects with the Occupational Safety and Health Act of 1970, as amended (29 USC § 651, et seq.) and the applicable requirements of the Occupational Safety and Health Administration, if applicable, or such comparable foreign Law.

17. Anti-Bribery Compliance.

Supplier acknowledges that Buyer is subject to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and anti-bribery and anti-corruption Laws in various other jurisdictions. Supplier will (a) comply in all respects with such Laws, including the comparable Laws of all jurisdictions where it or its agents are conducting business, (b) provide written certification of its compliance with the foregoing when asked by Buyer, and (c) cooperate with Buyer and its designees at Supplier's expense in any inquiry or investigation of Supplier or its agents regarding their conduct or alleged conduct relating to compliance or failure to comply with any of the foregoing.

18. Child Labor and Forced Labor.

Supplier warrants that it does not employ children, prison labor, indentured labor, bonded labor or use corporal or other forms of mental and physical coercion as a form of discipline. Moreover, Supplier agrees that it will not conduct business with vendors employing children, prison labor, indentured labor, bonded labor or who use corporal punishment or other forms of mental and physical coercion as a form of discipline. In the absence of any national or local Law, Buyer and Supplier agree to define "child" as



less than 15 years of age. If local minimum age Law is set below 15 years of age, but is in accordance with exceptions under International Labor Organization (ILO) Convention 138, the lower age will apply.

19. Social Responsibility; Company Values

Supplier warrants that it is in compliance with, and requires its employees and permitted subcontractors and any person under its control to comply with, all applicable Laws relating to ethical and responsible standards of behavior, including, without limitation, those dealing with human rights (including, without limitation, human trafficking and slavery), environmental protection, sustainable development and bribery and corruption.

20. Compliance with Privacy and Information Security Requirements.

If Supplier collects, processes and/or stores on behalf of Buyer any personal health information or personally identifiable information (e.g., name, Social Security number, payment card account information, medical information, etc.) (collectively, "Personal Information"), then Supplier shall: (i) process such Personal Information only on behalf of and for the benefit of Buyer, (ii) hold such Personal Information in strict confidence and limit access to those of Supplier's personnel who have a need to know the Personal Information to perform the Services and who have explicitly agreed in writing to hold such information in confidence; (iii) not transfer Personal Information outside the United States without the explicit written consent of Buyer; (iv) as applicable, implement appropriate measures designed to protect the Personal Information against the specific risks associated with transmission over a network and/or the internet; (v) unless otherwise required by Law, not share, transfer, disclose or otherwise provide access to any Personal Information to any third party, or contract any of its rights or obligations concerning Personal Information to a third party; (vi) comply with (A) all applicable Laws relating in any way to the privacy, confidentiality or security of Personal Information, (B) all applicable industry standards concerning privacy, data protection, confidentiality or information security; and (C) Buyer's written requirements relating in any way to the privacy, confidentiality and security of Personal Information.

In addition to any other obligation under these Terms, upon the occurrence of a breach involving Personal Information in the possession, custody or control of Supplier or for which Supplier is otherwise responsible, Supplier shall (i) reimburse Buyer on demand for all internal and external costs incurred by Buyer associated with investigating, addressing and responding to such breach, and (ii) indemnify and hold harmless the Buyer Indemnitees from, and at Buyer's option defend against, any and all losses that Buyer Indemnitees may incur as a result of any violation of this Section by Supplier or its agents.

21. Indemnification.

Supplier agrees to indemnify, defend and hold harmless the Buyer Indemnities from and against any and all Losses arising out of or resulting in any way from (i) Supplier's manufacture and/or supply of Goods to Buyer, (ii) Supplier's performance of Services, (iii) any defect in the Goods, (iv) the negligence or willful misconduct of Supplier, its agents or employees, (v) any claim for bodily injury or death, damage

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to property or any claim by an employee or subcontractor of Supplier for wages and benefits, (vi) Supplier's breach of any representation, warranty, covenant or other obligation hereunder (including, without limitation, with respect to its compliance with Buyer's Value's), and/or (vii) the infringement of any third party proprietary rights with respect to (A) Services performed by Supplier, and/or (B) Goods supplied by Supplier (including, without limitation, with respect to Supplier's manufacture and/or Buyer's use or possession thereof).

Supplier's obligation to indemnify will survive the expiration or termination of the Purchase Order by either party for any reason. Supplier may, at its option, conduct the defense of any third party action and Buyer will cooperate with Supplier's defense as reasonably requested. If the use or sale of any Goods is enjoined as a result of any action or proceeding, in addition to such other rights or remedies that Buyer may have hereunder or by Law, Supplier, at no expense to Buyer, will obtain for Buyer and its customers the right to use and sell said item, or will substitute an equivalent item, acceptable to Buyer, and extend this indemnity with respect to such item. In the event that Supplier is unable to secure such rights of use or to secure an equivalent item as a substitute for Buyer or its customers, Supplier will indemnify the Buyer Indemnities for any and all Losses sustained by reason of such injunction.

22. Limitation of Liability.

BUYER SHALL NOT BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM BUYER'S PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

23. Inspection; Rejection.

All Goods and Services are subject to Buyer's right of inspection and rejection on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are defective or otherwise do not conform to the descriptions and specifications delivered in connection with in the Purchase Order or otherwise communicated to Supplier in writing. If Buyer rejects any portion of the Goods and/or Services (as applicable), Buyer has the right, effective upon written notice to Supplier, to: (i) rescind the Purchase Order in its entirety; (ii) accept the defective and/or non-conforming Goods and/or Services (as applicable) at a reasonably reduced Price; or (iii) reject the non-conforming Goods and/or Services (as applicable) and require the replacement or reperformance (as applicable) thereof.

If Buyer requires replacement or reperformance of non-conforming Goods and/or Services (as applicable), Supplier will, at its expense, promptly replace or reperform the non-conforming Goods and/or Services (as applicable) and pay for all related expenses, including, but not limited to, transportation charges for the return of the non-conforming Goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods or reperform Services (as applicable), Buyer

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may replace the non-conforming Goods and/or Services (as applicable) with goods and/or services (as applicable) from a third party and charge Supplier the cost thereof and terminate the Purchase Order for cause.

Any inspection or other action by Buyer under this Section will not reduce or otherwise affect Supplier's obligations under the Purchase Order, and Buyer will have the right to conduct further inspections after Supplier has carried out its remedial actions. Acceptance by Buyer will not occur unless and until (i) with respect to Goods installed by Supplier, any acceptance tests or programs described in the Purchase Order or attachments thereto are completed to Buyer's satisfaction, as evidenced by an acceptance certificate signed by Buyer, (ii) with respect to any Services performed by Supplier, such Services are completed to Buyer's satisfaction, as evidenced by any acceptance certificate signed by Buyer, or (iii) with respect to Goods not installed by Supplier, Buyer has not notified Supplier, within thirty (30) days following receipt of the Goods by Buyer, that Goods are defective or otherwise do not conform to Specifications.

24. Audit Rights.

Buyer (and its representatives) has the right, during normal working hours and upon reasonable advance notice, to audit Supplier's facilities and examine Supplier's books and records to verify compliance with its obligations hereunder, including, without limitation, its compliance with Laws and Buyer's Values.

25. Termination Rights.

Buyer reserves the right to cancel all or any part of the undelivered portion of the Purchase Order if Supplier does not provide conforming Goods and/or Services as specified, time being of the essence, or if Supplier breaches any of the terms hereof including, without limitation, the Warranties.

Buyer further reserves the right to terminate the Purchase Order in whole or in part for convenience upon written notice to Supplier, in which event Supplier will be entitled only to reasonable termination charges consisting of actual direct costs resulting from termination.

26. Force majeure.

Neither party will be liable for any delay or failure in performing its obligations under the Purchase Order (including failure to take delivery of the Goods) to the extent that such delay or failure is caused, without such party's fault or negligence, by a Force Majeure Event. For purposes of these Terms, a "Force Majeure Event" refers to the occurrence of unforeseeable and/or unavoidable circumstances beyond a party's control that, by their nature, make such party's performance commercially impractical, including, but not limited to, acts of God or the public enemy, fire, flood, acts of war, government action, accident, earthquakes, explosion, epidemic, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. A party's economic hardship or changes in market conditions are not considered Force Majeure Events excusing such party's performance. Supplier will use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event

are minimized and resume performance under the Purchase Order. If a Force Majeure Event prevents Supplier from carrying out its obligations under the Purchase Order for a continuous period of more than thirty (30) days, Buyer may terminate the Purchase Order immediately by giving written notice to Supplier.

27. Cumulative Remedies.

Every right and remedy reserved by Buyer will be cumulative and additional to any other or further remedies provided in Law or equity or in these Terms.

28. Confidentiality.

If the parties have executed a separate confidentiality agreement (a "CDA"), the terms of such CDA will govern the disclosure and receipt of Confidential Information (as defined in the CDA) by and between the parties. If a CDA is not in effect between the parties, the remainder of this Section will apply.

Supplier agrees to keep all Confidential Information (as defined below) in confidence during and following termination or expiration of the Purchase Order.

Confidential Information includes but is not limited to any and all information or material that is proprietary or commercially valuable to Buyer, including, without limitation, know-how, technical information, data, trade secrets, inventions (whether patented or unpatented), technologies, samples and materials, research or business plans, products, services, customer and supplier lists, operations, manufacturing processes, software, hardware, equipment, databases, discoveries, formulas, diagrams, drawings, graphs, blueprints, specifications, laboratory books, records, designs, analyses, test materials, compounds, computer programs in human or machine-readable code (including notes, spread-sheets and flow-charts), marketing, financial, manufacturing and other business data and projections (including, without limitation, operation costs, profit margins, raw materials, sales information, production and technology costs), unpublished documents, and the contents and existence of the Purchase Order. Confidential Information will include the confidential information of any third party who has given Buyer the right to use such confidential information subject to a non-disclosure agreement between Buyer and such third party. Confidential Information need not be labeled as such to enjoy the protections afforded the same but need only be of the kind generally understood to be confidential, proprietary or commercially valuable.

Confidential Information does not include any information that (i) Supplier lawfully knew without restriction on disclosure before Buyer disclosed it to Supplier, (ii) is now or becomes publicly known through no wrongful act or failure to act of Supplier, (iii) Supplier developed independently without use of Confidential Information, as evidenced by appropriate documentation, or (iv) is hereafter lawfully furnished to Supplier by a third party as a matter of right and without restriction on disclosure. In addition, Supplier may disclose Confidential Information which is required to be disclosed pursuant to a

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requirement of a government agency or Law so long as Supplier provides prompt notice to Buyer of such requirement prior to disclosure.

Supplier agrees not to copy, alter or directly or indirectly disclose any Confidential Information. Additionally, Supplier agrees to limit its intentional distribution of Confidential Information to those who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Supplier of nondisclosure agreements with provisions substantially similar to those set forth herein.

In no event will Supplier use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Confidential Information.

Supplier further agrees not to use Confidential Information except in the course of performing hereunder and will not use Confidential Information for its own benefit or for the benefit of any third party. The mingling of Confidential Information with information of Supplier will not affect the confidential nature or ownership of the same as stated hereunder. Supplier agrees not to design or manufacture any products which incorporate Confidential Information.

The terms of this Section are in addition to, and will complement and supplement any other agreement between the parties regarding confidentiality or security of information, including, without limitation, any applicable CDA.

29. Intellectual Property; License.

As between the parties, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Supplier alone or with others which result from or relate to any Services performed under the Purchase Order (collectively, "Work Product"), and all rights with respect thereto, will at all times be and remain the sole and exclusive property of Buyer.

Standard goods manufactured by Supplier and sold to Buyer without having been designed, customized or modified for Buyer do not constitute Work Product and, as between the parties, all rights with respect thereto will remain the sole and exclusive property of Supplier.

The foregoing notwithstanding, Supplier hereby grants to Buyer a non-exclusive, royalty-free worldwide license to use such of Supplier's intellectual property, if any, as is required to give Buyer full benefit of any Goods that incorporate such Supplier intellectual property.

Except as otherwise set forth herein, as between them, each of Buyer and Supplier will retain the sole and exclusive rights in all of its intellectual property.

30. Assignment.

Neither the Purchase Order nor any of the rights and obligations of Supplier thereunder may be assigned or transferred by Supplier without the prior written consent of Buyer. The Purchase Order will be binding upon and inure to the benefit of parties and their respective successors and permitted assigns and no other person will have any right, obligation or benefit hereunder. Any attempted assignment or transfer in violation of this Section will be void.

31. Relationship of Parties.

Supplier is an independent contractor for all purposes, without express or implied authority to bind Buyer by contract or otherwise. Neither Supplier nor its employees, agents or subcontractors are agents or employees of Buyer, and are therefore are not entitled to any employee benefits of Buyer, including but not limited to, any type of insurance. Supplier will be responsible for all costs and expenses incident to performing its obligations under the Purchase Order and will provide Supplier's own supplies and equipment. Except as otherwise set forth in these Terms, the manner and means of providing the Goods and/or Services (as applicable) to Buyer are subject to Supplier's sole control.

32. Notices.

All notices, requests, demands and other communications that are required or may be given pursuant to the Purchase Order will be in writing and sent by mail, overnight courier or facsimile, to (a) Supplier at the address indicated in the Purchase Order, or (b) Buyer, at the address indicated in the Purchase Order with a copy, which will not constitute notice, to Excelsior Alchemy, Inc. 1310 West Drivers Way, Suite 120, Tempe, AZ, 85284, Attention: General Counsel, or to such other address as one party may later specified to the other party in writing.

Delivery of any such notices will be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting party if by facsimile transmission; (c) at the time of receipt if given by electronic mail to the e-mail addresses set forth in the Purchase Order or otherwise communicated to the other party; provided, however, that a party sending notice by electronic delivery will bear the burden of authentication and of proving transmittal, receipt and time of receipt; (d) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section; or (e) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours for overnight delivery against receipt, and properly addressed as set forth in this Section.

33. Amendment and Modification.

No change to the these Terms is binding upon Buyer unless it is in writing, specifically states that it amends these Terms and is signed by an authorized representative of Buyer.

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34. Waiver.

Except as otherwise set forth herein, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order will operate or be construed as a waiver thereof. Waiver by either party of any default of the other will not operate to excuse the defaulting party from further compliance with this contract, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

35. Signatures

By accepting and fulfilling a purchase order with Excelsior Alchemy vendor agrees to the abide by the above terms and conditions. Signature is optional.

Vendor

Signed _____ Dated _____

Buyer

Signed _____ Dated _____