

Fill in this information to identify the case:

Debtor Enviva Pellets, LLC

United States Bankruptcy Court for the: Eastern District of Virginia
(State)

Case number 24-70505

**Official Form 410
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

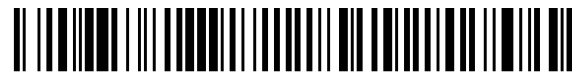
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p><u>AIR POWER USA</u> Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p><u>AIR POWER USA</u> <u>APenergy</u> <u>64 GRANVILLE STREET</u> <u>STE 202</u> <u>GAHANNA, OH 43230</u></p> <p>Contact phone _____</p> <p>Contact email <u>marni@apenergy.com</u></p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Contact phone _____</p> <p>Contact email _____</p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 6499-1 ____

7. How much is the claim? \$ 5000. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Services performed

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/05/2024
MM / DD / YYYY

/s/Marlene M Pease
Signature

Print the name of the person who is completing and signing this claim:

Name Marlene M Pease
First name Middle name Last name

Title Admin / Financial Manager

Company Air Power USA dba APenergy
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 249-2695 | International (310) 751-2601

Debtor: 24-70505 - Enviva Pellets, LLC		
District: Eastern District of Virginia, Alexandria Division		
Creditor: AIR POWER USA APenergy 64 GRANVILLE STREET STE 202 GAHANNA, OH, 43230 Phone: Phone 2: Fax: Email: marni@apenergy.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Services performed	Last 4 Digits: Yes - 6499-1	Uniform Claim Identifier:
Total Amount of Claim: 5000	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Marlene M Pease on 05-Jun-2024 11:43:49 p.m. Eastern Time Title: Admin / Financial Manager Company: Air Power USA dba APenergy		



Independent and Brand Neutral

Air Power USA Inc
64 Granville St Ste 202
Gahanna OH 43230
(740) 862-4112

Invoice

Date	Invoice #
8/28/2022	4845
Federal Tax ID: 02-0397140	

Bill To
Enviva Pellets 272 Wisconsin Avenue Suite 1800 Bethesda MD 20814 ATTN: Accounts Payable

Ship To	
Enviva Pellets 309 Enviva Blvd Garysburg NC 27831 ATTN: Dustin Deloatch	
PO Number	Terms
NOPPON0016499-1	30 Net

Description	Qty	Rate	Amount
COMPRESSED AIR SYSTEM REVIEW Compressed Air System Technical Assessment		5,000.00	5,000.00

		Total	\$5,000.00
		Payments/Credits	\$0.00
		Balance Due	\$5,000.00
E-mail	Web Site		
marni@airpowerusainc.com	www.apenergy.com		

Enviva Pellets, LLC

Date

05/10/2022

PURCHASE ORDER

NOPPON0016499-1

Air Power USA

64 Granville Street, Ste 202
Gahanna OH 43230
USA



enviva[®]

Billing Address

7272 Wisconsin Avenue
Suite 1800
Bethesda MD 20814
USA

E-mail all invoices to

APIInvoices@envivabiomass.com

Delivery address

309 Enviva Blvd
Garysburg NC 27831
USA

Point of Contact

Phone

Email

Requisitioned By Dustin Deloatch

Payment Terms Net 30 days

Delivery Terms FOB Destination

Delivery Date 5/10/2022

Notes

No	Attention	Description	Quantity	Unit	Unit price	Amount
1		Air Power Technical Site Assessment	1.00	ea	5,000.00	5,000.00 USD
Sub Total Amount						5,000.00 USD
Shipping Charge						0.00 USD
Sales tax						0.00 USD
Total						5,000.00 USD

Date

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**Enviva Pellets, LLC
GENERAL TERMS**

PLEASE READ ALL PAGES CAREFULLY. BY RETURNING A SIGNED WRITTEN ACKNOWLEDGMENT OF THE PURCHASE ORDER, CONTRACTOR AGREES TO THESE TERMS (UNLESS SUCH PURCHASE ORDER EXPRESSLY PROVIDES THAT IT IS SUBJECT TO THE TERMS OF ANOTHER AGREEMENT FOR PROVISION OF GOODS AND/OR SERVICES BETWEEN THE PARTIES).

1. **Terms and Acceptance.** Contractor agrees to be bound by and to comply with all terms set forth herein and in the Purchase Order to which these General Terms are attached (collectively, this **"PO"**) effective upon the date on which it returns an executed acknowledgment copy of this PO. No other form of acceptance shall be binding on Owner. This PO constitutes the entire agreement between Contractor and Owner and supersedes all other prior oral or written agreements or understandings between them concerning the subject matter of this PO.

2. **Inspection and Warranty.** All articles, equipment, materials, goods and other items identified on the first page of this PO (**"Goods"**) delivered to Owner, as well as all services required to be performed by Contractor pursuant to this PO (together with all articles, equipment, materials, goods and other items to be provided by Contractor associated with such services, the **"Services"**), in each case directly or indirectly and whether paid for or not, are subject to inspection, testing and approval by Owner before acceptance, including inspection of the place of manufacture (if applicable). Contractor expressly warrants that all Goods and Services: (a) are (except in the case of services) new and unused, and Owner will be the first end-user, (b) conform in all respects to the applicable specifications, samples, and other descriptions identified in this PO or other documents relied upon by Owner; (c) will perform as set forth herein, be fit for their intended purpose and be of good quality, merchantable and free from defects (both latent and patent); (d) are free and clear of all liens, claims, encumbrances and security interests (**"Liens"**); and (e) comply with all applicable federal, state, local and foreign laws and regulations, including, without limitation, the Fair Labor Standards Act, the Occupational Safety and Health Act and the Foreign Corrupt Practices Act. The warranties set forth herein shall survive for the longest of (i) one (1) year after acceptance of Goods or Services, (ii) for Goods, eighteen (18) months after the delivery date, or (iii) such period offered by Contractor to Owner or to its customers generally. The foregoing warranties are in addition to, and not in lieu of, any warranties provided by Contractor to its customers generally and any warranties from any third party manufacturers with respect to the Goods or Services; to the extent applicable, Contractor shall, on behalf of Owner, enforce any such manufacturer warranties against third parties. Upon request, Contractor shall certify compliance with any applicable law or regulation and provide evidence of the assignability of any applicable warranties from third party manufacturers. All Goods and Services not fully in compliance with this PO, shipped or performed contrary to instructions, shipped or performed in excess of the quantities ordered, or violating any statute, ordinance, or administrative order, rule or regulation, may be rejected by Owner and returned or held at Contractor's expense and risk. Owner may charge to Contractor all expense of inspecting, unpacking, examining, repacking, storing, and reshipping any Goods or Services rejected as aforesaid. Contractor shall, in a timely manner, correct, at its expense, all defects notified to or by Owner or of which it otherwise has knowledge. If Contractor does not correct any defect pursuant to the foregoing sentence within a reasonable time following awareness of such defect, Owner, acting reasonably, may, upon 10 days' notice in its discretion, remedy such defect, and all costs of remedial work and other reasonable costs associated with such defect shall be borne by Contractor. The remedies herein afforded to Owner shall not be exclusive, but Owner may hold Contractor liable for any and all damages arising from any breach or default of this PO.

3. **General Responsibilities; Liens.** Contractor shall (a) perform or deliver (as applicable) the Services (if any) set forth in this PO (i) in accordance with all applicable laws, all applicable permits and prudent industry practices and (ii) through the course of any dispute with Owner (unless otherwise directed by Owner), (b) provide Owner with any deliverables, reports and other documents that Owner may reasonably request, (c) take all reasonable measures to ensure the safety of its employees, including, without limitation, the maintenance of a safe and clean work area, and (d) comply with, and ensure its employees comply with, Owner's site safety requirements in addition to applicable Contractor safety plans, policies and requirements. Should Contractor or any subcontractor of any tier thereof file a Lien against all or any portion of the Services, the site, the facility or the project, as may be applicable, Contractor shall, at its sole cost and expense, remove and fully discharge, by payment, bond or otherwise, such Lien within 10 days of the filing. If Contractor fails to do so then Owner may, in its sole discretion, remove and discharge such Lien using whatever means Owner deems appropriate and Contractor shall be liable to Owner for all costs, expenses and liabilities incurred by Owner arising out of or relating to such removal and discharge.

4. **Price.** In consideration for the provision or performance of acceptable Goods and/or Services, as applicable, Owner shall pay and Contractor shall accept, as Contractor's entire compensation, the price set forth on the PO (the **"Price"**). The Price for any Services includes any and all sales or similar taxes applicable to the Services. The Price for any Goods or Services includes any and all Contractor Taxes (as defined below) and is not subject to increase without Owner's prior written consent. No additional amounts shall be chargeable to Owner because of any taxes or excise presently or hereafter levied on Contractor or any subcontractor thereof of any tier. If Contractor's quoted prices for any Goods or Services covered by this PO are reduced (whether in the form of a price reduction, close-at rebate, allowances, or additional discounts offered to anyone) at the time of performance or delivery (as applicable) of any Goods or Services, the Price shall be reduced accordingly. If Contractor's quoted prices include taxes or excises, and if all or part of such taxes or excises are hereafter refunded to Contractor, Contractor shall immediately pay Owner the amount of such refund. Contractor shall be liable for and shall pay all compensation to its employees and all Contractor Taxes, contributions, penalties or other costs or charges imposed by applicable law. **"Contractor Taxes"** means any and all taxes, fees and contributions on or measured by the income, gross receipts or assets of Contractor or its subcontractors of any tier and all taxes, fees and contributions on or measured by employees, other labor costs of Contractor or its subcontractors of any tier, including, without limitation, all payroll or employment compensation tax, social security tax or similar taxes for Contractor's or any such subcontractor's employees, and all taxes and fees on subcontracts or other Contractor expenses incurred in performance or delivery of Goods and/or Services, as applicable.

5. **Invoicing and Payment.** Contractor shall prepare an invoice of all or the relevant portion of the Goods and Services, as applicable, to be forwarded by way of e-mail to APIInvoices@envivabiomass.com with all other documents required to effect shipment or performance (as applicable) of such Goods and Services in accordance with the invoicing schedule set forth in this PO or, absent such invoicing schedule, upon Owner's acceptance of all of the Goods and Services (each, an **"Invoice"**). Each Invoice shall contain the following: (a) all information described under the heading, "Billing Instructions" in this PO; (b) wire information for payment; (c) solely with respect to Goods, applicable sales or similar taxes; and (d) any other information Owner may reasonably request in advance. Payment on such Invoice shall not constitute acceptance of the Goods or Services and shall be subject to (i) adjustment for errors, shortages, defects in Goods or Services or other failure of Contractor to meet PO requirements and (ii) Owner's receipt from Contractor of written releases and lien waivers in the form included in this PO and in substance acceptable to Owner from Contractor with respect to all Services for which payment is being sought and, in the case of the final invoice, with respect to all Services. Payment on all undisputed amounts under each Invoice shall be net sixty (60) days unless otherwise set forth in this PO. Owner may, upon written notice to Contractor, set off any amount due from Contractor under this PO against any amount due Contractor or claimed by Contractor to be due under this PO. In addition, Owner may withhold from Contractor, or invoice Contractor for, any amount sufficient to reimburse Owner for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with this PO. If any third party claims for which Owner is entitled to indemnification are made or threatened, Owner may retain all or any part of amounts due Contractor under this PO as it considers necessary until all such claims have been resolved and evidence to that effect has been furnished to Owner's satisfaction.

Date

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6. **Delivery and Performance; Time of the Essence.** Time is of the essence for this PO. This PO is based upon Contractor's agreement that Goods will be delivered to Owner and Services will be completed by the dates specified on the face of this PO or in an attachment hereto or as subsequently committed by Contractor. If delivery of Goods or performance or shipment (as applicable) of Services is not completed by such time, Owner reserves the right, without liability, in addition to and without waiving any of its other rights and remedies under this PO or at law, to terminate this PO by notice effective when received by Contractor, as to any or all stated Goods or Services not yet delivered, performed or shipped (as applicable), and to cover by procuring substitute Goods or Services elsewhere. Contractor shall be responsible for any excess and additional costs as a result of procurement of such substitute Goods and Services. The acceptance of later-delivered or performed Goods or Services or defective Goods or Services shall not be deemed a waiver by Owner of the right to cancel this PO or to refuse to accept further Goods or Services. Contractor shall arrange for and deliver, perform or ship (as applicable) all Goods and Services at or to, as applicable, the place designated in this PO, if applicable. Contractor shall pack, or shall cause the carrier to pack, all Goods in a manner that is in accordance with good industry practices and adequate to ensure safe arrival of the Goods at the appropriate place designated in this PO. Each container of Goods shall be clearly labeled to indicate the applicable PO number(s) and quantities of goods. Contractor shall perform and furnish all Services in a manner consistent with good industry practices.

7. **Intellectual Property.** Contractor hereby grants to Owner an irrevocable, assignable, nonexclusive, royalty-free, unrestricted, worldwide right and license to use any intellectual property of Contractor included in the Goods or Services furnished under this PO. Contractor expressly warrants that there has been no violation, misappropriation or infringement of any trade secret, patent, trademark, copyright, or other third party property right (including, without limitation, any violation of a third party license) in any way connected with or arising out of furnishing the Goods or Services specified in this PO.

8. **Risk of Loss.** Title to any Goods, or any articles, equipment, materials, goods or other items constituting Services, passes from Contractor to Owner upon the earlier of (a) its delivery to the destination indicated in this PO and (b) Owner's payment for such item. Contractor shall bear all risk of loss and be responsible for the care, custody and control of each Good or item constituting Services until Owner's acceptance of all Goods and Services as notified to Contractor after inspection by Owner.

9. **Indemnification by Contractor.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold Owner and its affiliates and their respective agents, members, officers, directors, representatives, employees, successors and assigns (each, an "**Owner Indemnified Party**") harmless from and against any and all claims, suits, demands, injuries, fines, penalties, damages, losses, expenses, liabilities and interest arising from or in any manner relating to (a) Contractor's performance, or breach, of this PO; (b) Contractor's interference with, or damage to or destruction of, the work or property of any Owner Indemnified Party or third party; (c) in respect of Services, any taxes, duties, charges or excise constituting part of the Price or for which Contractor is responsible hereunder; or (d) any allegation that any Good or Service (or any part thereof) furnished under this PO infringes or violates any patent, copyright, trademark, trade secret, service mark, invention or other intellectual property or proprietary right of any third party or is the basis for unfair competition resulting from similarity in design, trademark or appearance. In case any part of the Goods or Services is held in any such suit or proceeding to constitute infringement and its use is enjoined, Contractor shall, or at any time after a claim of infringement arises, Contractor may (at Owner's option), promptly either (i) secure for Owner the perpetual right to continue the use of such Goods or part of the Services by procuring for Owner a perpetual, royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction; (ii) replace at Contractor's own expense such Goods or part of the Services with an adequate non-infringing Good or part or modify it so that it becomes non-infringing, but only if the replacement or modification does not adversely affect Owner's acquisition costs, operating or maintenance costs, construction or operating schedules, operation or maintenance procedures, public relations, employee relations, any license or permit affecting Owner's property, the functionality or optionality of the Goods or Services, or any other matter relating to Owner's property or its operation; or (iii) refund the entire Price of the Goods and Services affected. Notwithstanding anything to the contrary, as to any claim made by Owner hereunder, Contractor expressly waives any limitation of liability or immunity from suit with respect to injuries to employees of Contractor which may be extended to Contractor under any applicable workers' compensation statute, or similar law or judicial decision.

10. **Insurance Requirements.** In addition to any other insurance requirements which may be required in connection with this PO, and solely in respect of Services:

(a) Contractor shall, and shall require its subcontractors to, obtain and maintain the following minimum insurance coverage during the term of this PO:
(i) Commercial General Liability ("**CGL**") insurance having a \$1,000,000 combined single limit per occurrence with a deductible or self-insured retention not to exceed \$25,000.

Each CGL policy shall (A) be written on an occurrence basis, (B) include blanket contractual liability and products and completed operations coverage, and (C) be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Owner (including its affiliates and their respective directors, officers, agents and employees) each of whom shall be added as an additional insured and shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of, relating to in any way, or incident to the Services or any activities of Contractor personnel or its subcontractors' personnel on the premises of, or in connection with any property of, Owner or its affiliates, regardless whether instituted against Contractor alone or jointly with others, and whether or not negligence or liability is charged solely against Contractor, its directors, officers, affiliates, agents and/or employees. Any insurance carried by Contractor shall be excess of and non-contributing with insurance afforded by this policy.

If any of the Services performed by Contractor or its subcontractors includes blasting, explosion, excavation, pile driving or caisson work, moving, shoring, underpinning, razing or demolition of any structure or removal or rebuilding of any structural support thereof, or any subsurface work, the CGL policy shall cover such activities and the certificate of insurance described below shall indicate that insurance is provided for such activities.

(ii) Business Auto Liability insurance having a \$1,000,000 combined single limit per accident, including coverage for all owned, non-owned, hired and leased automobiles.

(iii) Workers' Compensation insurance having coverage that complies with any statutory obligation imposed by workers' compensation, occupational disease or similar applicable laws.

(b) Prior to performing under this PO, Contractor and its subcontractors shall provide Owner with certificates of insurance evidencing the above insurance requirements.

Any failure of such certificates to conform to such contractual requirements shall not result in a waiver of Contractor's required insurance, and all of Contractor's indemnity and insurance obligations shall continue in full force and effect. Such certificates shall (i) name Owner, its directors, officers, affiliates, agents and employees and such other parties as Owner may designate as an additional insured (except workers' compensation), (ii) provide that Owner shall receive sixty (60) days' prior written notice of non-renewal, cancellation or modification to any of the above policies and (iii) indicate that the CGL policy has been endorsed as described above.

(c) All insurance shall be maintained with insurers authorized to do business in the state in which the Facility is located and all locations where Services will be performed, with an A.M. Best rating of A- / VII or better.

(d) All insurance policies (except workers' compensation) shall provide (i) standard cross-liability provisions and (ii) waiver of all rights of subrogation against Owner.

11. **Modification.** Owner may at any time, by written order, make changes or additions within the general scope of this PO. If any such change causes an increase or decrease in the cost, or the time required for performance, of this PO, Contractor shall notify Owner in writing immediately, and an appropriate equitable adjustment will be made in the Price or time of performance, or both, by written modification of this PO signed by both parties. No substitutions or partial shipments are authorized unless otherwise agreed in this PO. Should Contractor be unable to fill an order exactly as written or exactly in compliance with the referenced part numbers, specifications, codes, standards and drawings, as applicable, Contractor shall immediately notify Owner prior to processing this PO. Owner shall not be bound by any change to this PO (including, without limitation, any increase in payments) unless authorized in writing by Owner's authorized representative.

12. **Cancellation; Default.** Owner may, at any time and from time to time without cause, cancel or suspend all or any part of the undelivered or unperformed

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portion of this PO by notice to Contractor. In the event of such cancellation, Owner shall only be liable for amounts due Contractor under this PO for Goods delivered or Services performed or delivered, as applicable, and accepted. Owner shall not be liable to Contractor for loss of anticipatory profits or cancellation fees in connection with such cancellation or otherwise. Upon the occurrence of any one or more of the following events (each, a **"Default"**), Owner shall forthwith have the unrestricted right to cancel or terminate this PO without cost or liability to Owner: (a) Contractor's insolvency or inability to meet obligations as they become due; (b) filing of voluntary or involuntary petition of bankruptcy by or against Contractor; (c) appointment of a receiver for Contractor by any court of competent jurisdiction; (d) Contractor's repudiation of any of its obligations under this PO; (e) Owner's reasonable belief that Contractor will not be able to perform or deliver the Goods or Services, as applicable, in a satisfactory or timely manner; or (f) Contractor's commission of any one or more breaches of this PO which, individually or in the aggregate, constitute a material breach. Contractor shall be liable for any claims, damage, loss, liability or expense (including, but not limited to, attorneys' fees) incurred by Owner arising out of any Default. The acceptance of Goods or Services or performance or delivery following any Default shall not affect Owner's right to cancel its additional obligations.

13. Audit Rights. Owner may access Contractor's facilities and records related to the Services for inspection or audit by Owner, its designated representatives and/or other parties authorized by Owner. This shall include, but is not limited to, the right to audit material, test, inspection, services, and quality records; make surveillance visits during performance or manufacture (if applicable); and witness tests to the extent Owner deems necessary to assure that (a) the Goods are being designed and manufactured, and all related work is being performed, in accordance with all product design and manufacturing requirements and all requirements of this PO and (b) the Services are being performed in accordance with all requirements of this PO.

14. Assignments. Contractor may not assign this PO or any of its rights or obligations without Owner's prior written consent. Owner may assign and novate this PO to any (a) surviving or successor company to Owner in the event of a merger, sale of all or substantially all of its assets or equity securities, or consolidation, or (b) company that, directly or indirectly, controls, is controlled by, or is under common control with, Owner, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract, or otherwise.

15. Claims; Disputes. In no event shall Owner or its affiliates, or any of their respective officers, directors, employees or agents, be liable for any indirect, special, punitive, treble, incidental, or consequential damages, losses or expenses arising in connection with this PO. Any claim by Contractor for any adjustment in the Price must be asserted within 3 days of the event giving rise to such claim. In the case of any claim involving this PO, Owner shall issue a decision which shall be followed by Contractor without interruption, deficiency or delay pending resolution of such dispute. If Contractor does not agree with such decision, Contractor may make a request for equitable adjustment which shall be resolved by Contractor and Owner through negotiation and/or litigation.

16. Confidentiality. Contractor shall keep confidential and not make unauthorized use of any confidential or proprietary information of Owner disclosed in writing, orally or otherwise during performance of this PO, including, without limitation, financial and commercial information, documents, specifications, manuals, evaluations, methods, systems, know-how, processes, technical descriptions, reports and other data, records and information (collectively, **"Confidential Information"**). **"Confidential Information"** excludes information (a) known by Contractor prior to disclosure thereof by Owner; (b) that is, or becomes (other than by an act of Contractor), generally available to the public; (c) lawfully made available to Contractor by a third party in good faith; (d) developed by Contractor without reference to or reliance upon Confidential Information; or (e) to the extent required to be disclosed by applicable law; provided, that, to the extent permitted by applicable law, Contractor promptly gives notice to Owner of the impending disclosure and uses commercially reasonable efforts to obtain from the person to whom such disclosure is made written assurance that confidential treatment will be accorded to such information (at Contractor's expense). Contractor shall (i) make available to its own personnel Owner's Confidential Information only on a "need to know" basis, (ii) make all such personnel aware of the strictly confidential nature of the Confidential Information, and (iii) be liable for any use or disclosure of Confidential Information by such personnel other than as permitted of Contractor by this [Section 16](#).

17. Personnel. Contractor is an independent contractor with respect to Owner and neither Contractor or any of its subcontractors of any tier nor any of their respective employees shall be deemed to be Owner's employees, servants or agents and none of them may bind Owner in any manner. Contractor and its subcontractors of each tier shall be responsible for providing benefits (as applicable) and compensation to their respective employees. For purposes of this PO, Contractor shall request from Owner the approval of any employees or agent of Contractor or any subcontractor of any tier prior to such employee's or agent's entering onto any property (whether owned, leased or otherwise made available to Contractor in connection with any Services), or accessing any systems, of Owner or its affiliates. Contractor shall only use its employees to perform or deliver Services unless Owner has consented in advance to the use of the relevant subcontractor. Owner may in its sole discretion grant or revoke the approval of any employee or agent of Contractor or any subcontractor. Contractor shall immediately remove from the work area any such employee or agent for whom approval has been revoked by Owner and prevent such employee or agent from further performing or delivering Services under this PO.

18. Survival. Contractor's obligations hereunder shall survive cancellation or termination of this PO, and final payment for any Goods and Services, to the extent context permits.

19. General. This PO shall be governed by the laws of the state in which Owner's facility is located (or if Owner owns or operates facilities in multiple states, the state in which Owner's facility that benefits from the Goods or Services is located) (such facility, the **"Facility"**), without reference to its choice of law provisions. In all court proceedings brought in connection with this PO or the services provided hereunder, the parties hereto irrevocably consent to exclusive personal jurisdiction by, and venue in, any federal court sitting in the district in which the Facility is located and any state court sitting in the county in which the Facility is located (to the extent such court has subject matter jurisdiction), and agree not to assert in any such action, suit or proceeding that they are not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Each party hereby knowingly, voluntarily and intentionally waives any and all rights it may have to a trial by jury with respect to any litigation based on, or arising out of, under or in connection with this PO or the services provided hereunder. The remedies herein are in addition to all other remedies at law or in equity. No provision in this PO shall be construed to the disadvantage of a party merely because that party was responsible for its preparation or inclusion in this PO. If any term in this PO is found to be illegal, invalid or unenforceable by any competent authority, such provision shall be deleted from this PO and the remaining provisions of this PO shall continue to have full force and effect. The parties hereto shall, in such event, negotiate in good faith to agree to a mutually satisfactory legal, valid and enforceable substitute provision implementing to the fullest extent possible the intentions of the parties hereto at the time this PO was executed. This PO may be signed in counterparts (and using original, facsimile or electronic signatures) which taken together shall constitute one document