

## NUSIL TECHNOLOGY LLC

### TERMS AND CONDITIONS OF PURCHASE

These “Terms and Conditions of Purchase” apply to the purchase order or agreement document which they accompany or to which they are attached (the “Order”, and together with these Terms and Conditions of Purchase, this “Contract”). As used herein: (i) “Buyer” means NuSil Technologies LLC, (ii) “Seller” means the party fulfilling the Order and (iii) “Items” means any goods and services purchased hereunder. For purposes of the Contract, “Buyer” shall include the NuSil Technology LLC affiliate issuing the Order or for whom the Order is being fulfilled. Buyer and Seller are sometimes referred to individually as a “Party” and collectively, the “Parties”.

1. **ACCEPTANCE.** THIS ORDER IS ONLY AN OFFER TO ENTER INTO A CONTRACT. FOR THIS PURCHASE ORDER TO BE A VALID AND EFFECTIVE ORDER, IT MUST BE EXECUTED BY A DULY AUTHORIZED REPRESENTATIVE OF BUYER. BUYER MAY REVOKE, AMEND OR MODIFY THIS OFFER AT ANY TIME PRIOR TO SELLER’S ACCEPTANCE. ACCEPTANCE OF THE ORDER BY SELLER IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS OF PURCHASE. IF TERMS OR CONDITIONS ARE ADDITIONAL TO, OR DIFFERENT FROM THOSE OF THE SELLER’S OFFER, ANY ACCEPTANCE BY BUYER CONTAINED HEREIN IS EXPRESSLY MADE CONDITIONAL ON SELLER’S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. SELLER SHALL BE DEEMED TO ASSENT TO SUCH ADDITIONAL OR DIFFERENT TERMS IF: (1) SELLER SIGNS AND RETURNS TO BUYER A COPY OF THE ORDER; (2) SELLER SENDS AN ACKNOWLEDGMENT OR CONFIRMATION OF THE ORDER; (3) SELLER COMMENCES WORK ON THE ORDER; (4) SELLER SHIPS ALL OR PART OF THE ITEMS ORDERED; (5) SELLER ACCEPTS PAYMENT FOR THE ORDER; AND/OR (6) SELLER GIVES OTHER WRITTEN EXPRESSION OF ACCEPTANCE OF THE ORDER. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND CONDITIONS SET FORTH IN THE ACCEPTED ORDER AND ANY TERMS OR CONDITIONS PROVIDED BY SELLER, THE TERMS AND CONDITIONS SET FORTH HERIN SHALL CONTROL.

2. **PRICE, PAYMENT TERMS AND INVOICING.** The price for any Items shall not be higher than that appearing on the face of the Order, or if no price appears thereon, then not higher than the lowest price quoted by Seller to Buyer. Seller covenants that if it should, at any time prior to the delivery of the Items, sell or provide similar Items in similar quantities to any third party at lower prices, Seller will (a) notify Buyer in writing of such lower prices, and (b) provide Buyer with full benefit of such lower prices from the date of such sale or provision to any third party occurred. Should the Seller reduce its price for any Item included on the Order prior to delivery to Buyer, Seller shall reduce the price of such Item or correspondingly for Buyer. Unless otherwise stated on the face of the Order, Seller shall invoice Buyer for each Item on or after delivery of such Item to Buyer, and Buyer shall pay such invoice net sixty (60) days from the invoice date. Unless otherwise specified in the Order, the prices indicated on the Order include, and Seller shall pay, all packing, packaging, and shipping costs, all federal, state and local and comparable taxes, and any other costs or expense in connection with the sale, delivery or provision of the Items to Buyer. All invoices shall reference the purchase order issued covering the purchase and shall be delivered in electronic form to [accounting@nusil.com](mailto:accounting@nusil.com). Buyer reserves the right to withhold any payment for invoices which fail to provide sufficient detail to identify Items provided and their associated costs or that lack information necessary to process the Invoice. Only expenses that are approved by Buyer in advance in writing which are supported by reasonable documentation shall be reimbursable.

3. **DELIVERY.** Delivery on the Order must be made in the quantities, or in the case of services, as described, and on the dates agreed to in the Order documents or, where no such dates appear, as specified by the Buyer. Partial shipments shall be allowed only if specifically indicated in the Order. Unless otherwise specified in the Order, delivery of product Items is Delivered Duty Paid (as defined in Incoterms 2020), Buyer’s location or such other destination as may be specified in the Order. Seller acknowledges that Buyer’s production and marketing schedules or their operation schedules are based in part upon the delivery/completion date(s) specified in the Order. Time and place of delivery are, therefore, of the essence with respect to Seller’s performance under the Order. Any provision in the Order or subsequent agreement by Buyer for installment deliveries of the items specified in the Order shall not be construed as a waiver of this requirement or as severing Seller’s obligations for full, on-time, delivery of all Items specified in the Order. If Seller determines that it either cannot or may not complete delivery at the specified time and place or in the specified manner, Seller shall promptly notify Buyer and indicate the earliest possible date that it is confident that it can complete conforming delivery. Notwithstanding such notice, and notwithstanding that Seller’s failure to effect conforming delivery may be or is due to causes beyond Seller’s control, Seller’s failure to effect conforming delivery shall entitle Buyer, without any liability to Seller hereunder, to revoke any prior acceptance of a partial delivery by Seller, to return at Seller’s risk and expense all or any part of items delivered in partial satisfaction of the Order, to cancel the Order, to receive a refund of any amounts paid to Seller pursuant to the Order for any Items returned to Seller, and to purchase substitute Items or services elsewhere and charge Seller with any loss or additional costs incurred in connection with such purchases. If in order to comply with Buyer’s required delivery date it becomes necessary for Seller to deliver the items at an additional cost, any increased cost resulting therefrom shall be paid for by Seller unless the necessity for such additional cost has been caused by Buyer. Delivery of excess Items or Items provided prior to any agreed to delivery date may be returned by Buyer at Seller’s risk and expense, or retained by Buyer at no increase in price. Unless specifically indicated in the Order, payment shall be made after full delivery of the Item(s) and/or completion of the services and acceptance of the Items and/or services by Buyer.

4. **PACKAGING AND SHIPMENT.** For Items of product, equipment, or other tangible deliverables, Seller shall be solely responsible to ensure that all Items which are to be delivered to Buyer pursuant to the Order are packed, packaged, marked and otherwise prepared for shipment by Seller in suitable containers and in a manner consistent with sound commercial practices and industry standards for the mode of transportation which is to be utilized, and that appropriate security controls and other safeguards are taken to protect the Items from adulteration or damage. Seller shall mark on each container all necessary and required handling, loading and shipping instructions, as well as all legally required marking and warnings, and shall be fully responsible for all shipping and regulatory requirements imposed by the Department of Transportation or comparable agency. Seller shall include an itemized packing list with each container or shipment. Seller shall provide to Buyer Bills of Lading for each shipment. Buyer has the right to refuse delivery of Items in packaging failing to meet these requirements.

5. RISK OF LOSS; TITLE. Notwithstanding any terms relating to delivery and freight on the Order, risk of loss and title to Items delivered or provided by Seller shall remain with Seller until the Items ordered are actually delivered to and accepted at Buyer's offices or other destination designated in the Order or, where no such location is provided, in writing by Buyer. Title to and risk of loss for nonconforming Items shall remain with Seller.

6. INSPECTION AND REJECTION. Buyer reserves the right to inspect, test and, if found to be nonconforming, reject all or some lesser portion of any Items before, during and after manufacture, delivery or completion of services. If any inspection or test is to be made on Seller's premises, Buyer shall provide Seller advance notice of such inspection or test and Seller shall provide reasonable facilities and assistance for the safety and convenience of Buyer's inspectors in such manner as not to unreasonably hinder or delay Seller's performance. All Items are delivered subject to Buyer's inspection, testing, approval and acceptance at the specified delivery location notwithstanding any prior inspection or testing at Seller's premises or any prior payment by Buyer for the Items. In addition to Buyer's other rights and remedies available at law or equity, Buyer may return to Seller any Items rejected hereunder at Seller's sole expense and may charge Seller all expenses of unpacking, examining, repacking and reshipping such Items. Neither Buyer's inspection of the Items or anything contained in the Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control and providing the Items in accordance with the Order requirements.

7. RIGHT OF ACCESS AND AUDIT. NuSil, at its expense but no additional charge by Seller or Seller's suppliers, during normal business hours and at a mutually convenient time, may inspect that portion of the Seller's facility, or Seller's suppliers' facilities, used in the raw material receipt, supply, packaging, testing and warehousing of Items, as well as the records of Supplier related to the sale of Items, for the sole purpose of determining Seller's compliance with this Contract and the Order. In addition, NuSil shall have the right to conduct an audit of the Seller's facility, and Seller's suppliers' facilities, and all documentation maintained pertaining to the supply of items at any time (a) Products is received failing to routinely meet specification requirements, or (b) NuSil is made aware of any failure by Seller or Seller's suppliers to meet applicable operational or regulatory requirements, or (c) a change requiring application of the Change Control process is needed.

8. WARRANTIES. Seller warrants that it has the right and ability to provide the Items under the Order and that in doing so it will not be in violation of any law, regulation or order or any third party contract obligation. In addition to any other express or implied warranties applicable to the Items to be provided hereunder, Seller further warrants to Buyer and, as applicable, Buyer's customers that all Items delivered or provided hereunder will: (i) upon delivery and, thereafter, for the applicable standard warranty period (or, if no warranty period has been specified by Seller, for a period of one (1) year from the date of actual delivery or completion of the services) conform to those specifications specified in the Order, or if not specified, those specifications of the Buyer (which, in all cases, shall be controlling), and any samples, drawings, descriptions or specifications provided by Seller for the Order; (ii) be new, of good quality, material, and workmanship, merchantable, free of defect, and fit for the purposes for which they are intended; and (iii) be free of liens and encumbrances. In addition, Seller warrants that any services included in the Items shall be performed in a professional manner and in accordance with applicable industry standards. Seller warrants that, in performing its obligations hereunder, it shall fully comply with all applicable laws and regulations. Seller warrants that the Items shall not infringe the intellectual property rights of any third party. These warranties shall survive delivery, inspection, testing, and acceptance of, payment for, use or resale of the Items and shall be in addition to any other warranties, express or implied, available to Buyer under the law, and shall be enforceable by Buyer, its successors, assigns or customers or any end user of any product manufactured by Buyer which is associated with the Items furnished hereunder. Neither inspection nor acceptance of the Items shall impair any of the foregoing warranties. Seller is able to transfer, and upon Buyer's acceptance thereof does transfer, to Buyer good and marketable title to the Items. At Buyer's option, when notified of any nonconformity by Buyer, Seller shall, at Seller's cost and expense, promptly repair or replace any Items or, if applicable, re-do any services which do not conform to the foregoing warranties. In the event Seller fails to promptly honor the foregoing warranties, Buyer, after reasonable notice to Seller and in addition to its other remedies at law or equity, may repair or replace such Items, or re-do such services, and charge Seller for any associated cost(s) and expenses incurred. Provided, however, if Buyer is either unable or opts not to repair or replace any such Item or re-do any such service, Seller shall promptly refund to Buyer the full purchase price paid by Buyer for all such Items.

9. CONFIDENTIALITY. Unless information provided by Buyer is within the public domain (or becomes in the public domain by no act or omission of Seller), is received from a third party with a right to provide the same, is within the Seller's possession prior to receipt from Buyer and not under a separate confidentiality obligation, or was independently developed by Seller personnel without access to Buyer's information (as can be shown by documentary evidence), all information provided by Buyer shall be considered Buyer's proprietary information. Seller acknowledges and agrees that all such specifications, drawings, diagrams, schematics, sketches, models, samples, designs, technical information or data, written, oral, or otherwise, furnished by Buyer or on Buyer's behalf is and shall remain Buyer's sole and exclusive proprietary property, and shall be returned promptly to Buyer or its designee (together with all copies) upon the earlier of Buyer's request or the termination or completion of the Order. Seller acknowledges and agrees that all such Buyer intellectual or proprietary property, as well as the terms of the Order and the existence and content of the relationship between the Seller and Buyer, shall be treated as confidential and shall not be used or disclosed by Seller except as required in the course of performance hereunder or under other Orders of Buyer. Seller shall protect the confidentiality of all such Buyer information with the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable standard of care, and shall only make Buyer's information available to its personnel with a need to know the same. Unless otherwise agreed to in writing by Buyer, information and material furnished or disclosed by Seller to Buyer shall not be considered to be confidential or proprietary, and shall be acquired by Buyer free of restrictions of any kind. Seller recognizes that its breach of the confidentiality requirements of this section would cause Buyer significant harm which may not be covered by monetary damages alone. As such, Buyer shall have the right to injunctive or other equitable relief to protect its interest in the information provided and Seller shall not contest Buyer's right to seek the same. Seller shall remain responsible for its personnel or subcontractor's failure to honor the confidentiality requirements herein. Seller shall not use the name of Buyer, any of its affiliates, or any of its employees in any publicity, news release or other public announcement, written or oral, whether to the public, press or otherwise, without the prior written consent of Buyer.

**10. INTELLECTUAL PROPERTY; NONINFRINGEMENT.**

- a. Seller acknowledges and agrees that any and all work product specifically developed, made or conceived by Seller or its agents or employees in connection with its performance under the Order, including, but not limited to, all works of authorship, mask works, inventions, discoveries, technologies, methodologies, computer programs or files, software, data, concepts, designs, innovations and improvements, drawings, schematics, specifications, source code, and models, is hereby assigned to Buyer and all right, title, and interest therein (including all copyrights, trademarks, trade names, patents, and other intellectual property rights) shall be Buyer's sole and exclusive property. To the extent all right, title, and interest does not immediately and automatically vest with Buyer, Seller hereby assigns to Buyer all such right, title, and interest to Buyer, and agrees to execute and deliver to Buyer all documents necessary or advisable to document such assignment. Seller hereby appoints any of Buyer's officers as its duly authorized attorney, and Seller agrees to cooperate to the extent it may reasonably request, for the purposes of executing, filing, prosecuting and protecting the foregoing.
- b. Seller represents and warrants that the Items delivered or provided hereunder do not infringe any United States or foreign patent, trademark, trade secret or copyright, or any proprietary, intellectual property, contract or other right held by any third party and shall indemnify and defend Buyer from any such claims of infringement. Where a claim of infringement occurs, Seller shall purchase a right for Buyer continued use of the Item(s). If Seller is unable to purchase the right for Buyer's continued use, Seller shall modify the Items or replace with other Item(s) (provided they meet the same specifications and characteristics and perform in the same manner as the original Item provided under the Order) so as to make them not infringe. Where these options are not commercially reasonable, refund all sums paid for those Item(s) affected and any additional costs or expenses incurred by Buyer arising from the infringement.
- c. If Buyer approves any subcontracting by Seller, Seller shall include all provisions of this Section 10 for the benefit of Buyer in all of its subcontracts associated with this Order.

**11. TOOLS AND EQUIPMENT.** All tools, dies, molds, patterns, jigs, masks and other equipment, chemicals and materials furnished by Buyer to Seller or paid for by Buyer, directly or indirectly, and any replacements shall remain Buyer's property. Seller shall safely store such property separately from Seller's property, shall plainly identify such property as Buyer's property and shall not use such property in any other manner whatsoever, except in filling this or other Orders of Buyer. All such property shall be held at Seller's risk, shall be insured by Seller at its expense for an amount equal to its replacement cost and shall be returned promptly to Buyer upon the earlier of its request or the termination or completion of this Purchase Order. Use of any equipment provided by Buyer is on an "as is / where is" basis only and it shall be Seller's responsibility to determine the fitness of such equipment for Seller's use. All Seller personnel using Buyer's equipment shall be adequately trained and certified in the use of the same. It is Seller's responsibility to secure all of its property to be used for the Order while on Buyer's property and Buyer shall not be responsible for any loss to the same.

**12. CHANGES.** Buyer may, at any time, by written notice to Seller, make changes in services required, drawings, designs, specifications, method of packing shipment, quantity ordered, delivery location or delivery schedule and Seller shall either promptly comply therewith or promptly notify Buyer in writing why it cannot comply therewith. If any such change causes an increase or decrease in Seller's cost or time required for performance, Seller shall document such impact to Buyer in writing and the Parties shall negotiate in good faith for an equitable adjustment to the price or delivery schedule, or both and the Order shall, upon agreement by Buyer in writing, be modified accordingly. Seller agrees to accept any such changes subject to this paragraph. Any claim by Seller for adjustment under this Section 11 shall be deemed waived unless made in writing prior to commencing the change but no less than within ten (10) calendar days after receipt of written notice by Buyer of the change. No change, modification or revision of the Order shall be binding upon Buyer unless such change is in writing and signed by a duly authorized representative of Buyer.

**13. COMPLIANCE WITH LAWS AND SITE REGULATIONS.** Seller shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans and orders in the performance of this Order including, without limitation, the Age Discrimination in Employment Act, and Executive Order 11246, as amended, along with the implementing rules and regulations of the Office of Federal Contracts Compliance, Section 503 of the Rehabilitation Act of 1977, as amended; and 38USC 4212 of the Vietnam-Era Veterans' Readjustment Act of 1974, as amended, and U.S. government export control and anti-corruption laws and regulations including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) and the US Foreign Corrupt Practices Act 15 U.S.C. §§ 78dd-1, et seq. Seller further agrees to ensure that Seller and any of Seller's employees providing Items are authorized to work in the United States as required under the Immigration Reform and Control Act ("IRCA") of 1986. Seller shall indemnify Buyer for any penalties assessed against Buyer by the United States Citizenship & Immigration Service with regard to the knowing hiring of unauthorized workers and/or Form I-9 compliance paperwork violations, as well as any legal fees incurred by Buyer in defense of a related investigation by any branch of the U.S. Government. At Buyer's request, Seller shall provide appropriate certificates of compliance. Seller shall also comply with all applicable wage and employment laws applicable to its operations engaged in production or provision of the Items, and Seller shall comply with all applicable environment, health and safety laws and rules in producing, shipping or performance of the Items, and shall provide to Buyer current and complete Materials Safety Data Sheets and product information and specifications, as appropriate, for Items provided or materials used for any services. While on Buyer property, Seller personnel shall abide by those Buyer site regulations and procedures as are made known to the Seller and shall take all necessary precautions to prevent the occurrence of any injury to persons or property during such access. As applicable to the Items being provided, Seller will maintain all necessary licenses and permits during the term of the Order and will not provide Items or perform any services without having all applicable licenses and permits in place.

**14. GOVERNMENT CONTRACTS.** Unless specifically noted in the Order, the Order shall not be considered government related or performed pursuant to any government contract. Orders which specify either a government contract number or otherwise indicate that one or more Items specified in the Order will be used to satisfy a government contract or subcontract shall be subject to and deemed to fully incorporate all clauses and provisions

which are contained in such contracts and subcontracts which are applicable to Seller and Seller shall flow down all clauses and provisions to its suppliers which are required by the applicable FAR/DFAR provision.

15. CANCELLATION.

a. In addition to its other rights and remedies at law or equity, Buyer may, at any time, by written notice to Seller, cancel the whole or any portion of the Order either for cause or solely for its convenience. In the event of any cancellation, Buyer may procure, upon such terms and in such manner as it may deem appropriate, items compatible to the Items covered by the Order. Seller shall immediately stop all work hereunder on that portion of the Order, which is cancelled and, accordingly, shall immediately notify all of its affected suppliers or subcontractors that it is canceling all related orders and to cease all associated work. Upon cancellation for Buyer's convenience, Seller shall be paid a reasonable termination charge consisting of a percentage of the Order price reflecting the percentage of the work performed by Seller prior to the notice of termination to be mutually agreed by the Parties plus actual documented out-of-pocket costs directly associated with Buyer's cancellation. Where cancellation is due to Seller default, Seller shall only be entitled to payment for Items provided meeting the Order specification prior to the cancellation date less any actual costs incurred by Buyer arising from the default. Any termination charge shall be offset by the amount that may be recouped by Seller by sale of the cancelled Items to a third party. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by its suppliers or subcontractors which Seller could reasonably have avoided, except as may be agreed to by Buyer. In the event of any cancellation, Buyer may also require Seller to deliver to it in the manner and to the extent directed by Buyer, any completed or partially completed Items indicated on the Order subject to the payment by Buyer to Seller of an allocable portion of the price as may be agreed to by and between Buyer and Seller. Seller shall continue performance of the Order with respect to any portion of the Order which is not cancelled by Buyer. Except as expressly set forth in this Section 14, Buyer shall have no obligation or liability to Seller associated with its cancellation of all or a portion of the Order.

b. Without limitation, any breach which remains uncured more than thirty (30) calendar days following notification to Seller, including late deliveries, deliveries of Items which are defective or which do not conform to the Order, insolvency by Seller, or failure to provide Buyer, upon request, of reasonable assurances of future performance shall each constitute good cause to cancel the Order.

c. All of Seller's obligations set forth in the Order which by their nature are capable of surviving shall survive the cancellation, termination or completion of the Order.

16. FORCE MAJEURE. Except for an obligation to pay any sum when due hereunder, neither Buyer nor Seller shall, under any circumstances, be liable for any delay in or default of any of its obligations hereunder when such delay or default is caused by the following causes beyond its reasonable control and not due to its negligence: fire, flood, accident, act of God or war, (collectively, "Force Majeure Events"). Each Party agrees to notify the other as soon as possible of the occurrence of any Force Majeure Event.

17. INSURANCE. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, or otherwise, Seller shall, at all times prior to full delivery hereunder, maintain with an insurance company or companies having an A.M. Best rating of A-VIII or higher:

a. Comprehensive General Liability Insurance (including coverage for liability hereunder) in the minimum amount of \$5,000,000 combined single limit per occurrence or in such amount as may be specified in the Order or as agreed to by the Buyer;

b. Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers with a combined single limit of not less than \$1,000,000;

c. Professional Liability (error and omission) insurance, as necessary based on the scope of services, with a limit of not less than \$2,000,000, and

d. Pollution Liability, with a limit of not less than \$5,000,000 where the Seller utilizes or provides any chemicals, hazardous materials or provides Services which may involve the handling of the same, handling of waste(s) or involve the potential for pollution or environmental contamination, damage or exposure to Buyer or any third party property including natural resource damages.

e. In addition, Seller shall maintain all insurance coverages required by law, including Worker's Compensation insurance. The insurance coverages specified herein are not intended and shall not be construed as limiting Seller's liability or Buyer's right to indemnity hereunder. The General Liability, Auto Liability and Pollution Liability policies shall be endorsed to name NuSil Technology LLC, its affiliates and subsidiaries as additional insureds and shall be maintained on occurrence basis. Policies maintained on a claims made basis shall be maintained for a period of three (3) years from completion of the services. Seller shall provide Buyer with a Certificate of Insurance verifying the required policies are in place at the specified insurance levels prior to commencing work and at any time as requested by Buyer. The policies shall require notice to Buyer of any cancellation or material change in a policy no less than thirty (30) days from such change or cancellation, and Seller shall provide independent notice to Buyer of any such changes as well.

18. INDEPENDENT CONTRACTOR. Nothing herein is intended or shall be construed as creating or establishing the relationship of employer and employee, agency, partnership, or joint venture between Buyer and Seller nor any director, officer, agent or employee of Seller. Seller is being engaged as and shall perform all of its obligations hereunder as an independent contractor. Nothing herein is intended or shall be construed by any person as granting Seller the right, privilege or authority to make or execute an agreement on behalf of or otherwise bind or obligate Buyer in any way.

19. LIMITATION ON DAMAGES. Buyer's liability and Seller's recovery, for any injuries, losses, damages, expenses, costs, or other liabilities arising out of the any breach of this contract by Buyer, or Buyer's other acts or omissions (including its negligence) shall be limited to the lesser of (1) the actual and direct costs incurred by Seller for the Items in question prior to such breach, or other acts or omissions, or (2) the purchase price for the Order. In no event shall Buyer be liable to Seller for punitive, special, consequential, indirect, or incidental damages.

20. INDEMNIFICATION.

a. Seller shall indemnify, hold harmless and defend at Seller's sole cost and expense, Buyer, its parents, subsidiaries, affiliates and their officers, directors, personnel, representatives and agents, against any claim, suit, action, proceeding, judgment, loss, damage, other liability, cost and expense (including reasonable attorneys' fees and defense costs) arising from, relating to, or alleging: (i) any defect (including failure to comply with stated specifications) in the Items purchased or provided under the Order; (ii) any injuries (including death) to any person or damages or loss to any person or any property, or any consequential or incidental damages resulting therefrom, caused or contributed to by any act, fault, or negligence of Seller or anyone acting on its behalf or by any fault or defect in any of the Items (including by reason of strict liability in tort); (iii) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation, or other entity arising from the manufacture, sale, provision or use of any of the Items; (iv) any act or omission of Seller, its agents, employees or subcontractors; (v) any violation by Seller of any applicable laws, rules or regulations; and (vi) any breach of any of the terms and conditions set forth herein.

b. In the event that Seller is required, as part of its fulfillment of the terms of the Order, to perform work or services on Buyer's premises or on the premises of Buyer's customers, other than for claims arising from Buyer's act of gross negligence or willful misconduct, Seller assumes sole responsibility and liability for losses, expenses, damage, demands and claims in connection with or arising out of any bodily injury (including death) or property damage, which may be alleged to have been sustained in connection with the performance of such work or services by Seller. Seller shall indemnify and hold Buyer harmless from and against any and all losses, damages, demands, claims or liabilities, actions, causes of action, suits, costs and expenses (including attorney's fees and defense costs) arising out of or resulting in any way from the performance of such work or services by Seller or its employees, agents or subcontractors.

c. The indemnification rights provided herein shall be in addition to the warranty obligations of Seller and any other rights or remedies available to Buyer at law or equity.

21. CUMULATIVE REMEDIES NON-WAIVER. Buyer's remedies contained herein are cumulative and in addition to any other remedies at law or equity. The failure of either Party in any one or more instances to insist upon the performance of any of the terms or conditions of this Contract or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future insistence or performance of any such terms or conditions or the future exercise of any such right.

22. ENTIRE AGREEMENT. The Order and these Terms and Conditions of Purchase are the complete and exclusive statement of the contract between Buyer and Seller with respect to Buyer's purchase and/or procurement of the Items covered herein. No waiver, consent, modification, amendment or change of the terms of the Order shall be binding unless in writing and signed by Buyer. In case of a conflict between the terms and conditions on the Order and these Terms and Conditions of Purchase, the terms on the Order shall control; and with any documents referred to on the Order, constitute the entire agreement between the Parties.

23. ADDITIONAL OR INCONSISTENT TERMS. Any term or condition set forth in any document or form provided to Buyer by Seller which is any way different from, inconsistent with or in addition to the terms and conditions set forth herein shall not become a part of the Order or be binding on Buyer. If Seller objects to any term or condition set forth herein, Seller must notify Buyer of its objection in writing and any such change to the terms of the Order shall only apply if agreed to in writing by the Buyer. Buyer's failure to object to terms contained in any communication from Seller shall not constitute a waiver of such term or condition.

24. GOVERNING LAW; JURISDICTION. This Contract, and any disputes arising out of or relating to this Contract, shall be governed by and construed in accordance with the laws of the State of Delaware, including without limitation, the Uniform Commercial Code as in effect on the date of the Order, notwithstanding any conflicts of law rules to the contrary. The United Nations Convention on the International Sale of Goods shall not apply to this Contract or any purchase hereunder. Any action or proceeding directly or indirectly arising out of or relating to this Contract shall only be brought, heard, and determined in the State or Federal Courts located in Delaware. Seller hereby irrevocably submits and agrees to the exclusive jurisdiction and venue of such courts with respect to any such action or proceeding, and irrevocably waives any and all objections to personal jurisdiction and inconvenient forum, and agrees that process may be served upon it in any such action or proceeding by United States registered mail directed to the address indicated in the attached Order. EACH PARTY HERETO EXPRESSLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM RELATING TO OR ARISING IN ANY WAY FROM THE ORDER. BUYER AND SELLER EACH ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

25. REQUIRED CLAUSES. Any clause required to be included in a document of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.

26. ASSIGNMENT/SUBCONTRACTING. The Order and this Contract shall not be assigned by Seller without Buyer's prior written consent and any purported assignment hereof shall be null and void and shall not relieve Seller of its obligations hereunder. Seller shall not subcontract or delegate performance of all or any part of the services to be performed hereunder without the prior, written consent of Buyer.

27. FLOWDOWN. All provisions of this Contract that are required by law or regulation must be flowed down to Seller's subcontractors and sub-tier suppliers, as applicable.

28. SEVERABILITY. In the event any of the provisions of this Contract in any way violates or contravenes applicable law, such provision(s) shall be deemed not to be a part of this Contract and the remainder of this Contract shall remain in full force and effect.

29. SETOFF. All claims for money due or to become due from Buyers shall be subject to deduction or set off by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

30. NOTICES. Any notice or communication required or permitted under the Order shall be in writing and shall be deemed received when personally delivered, three calendar days after being sent via first-class mail, postage prepaid, or one business day after being placed for overnight delivery with a nationally recognized carrier, if to NuSil at:

Controller  
NuSil Technology LLC  
1050 Cindy Lane  
Carpinteria, CA 93013

With a copy to:  
General Counsel  
Radnor Corporate Center  
100 Matsonford Road  
Bldg. One, Suite 200  
Radnor, PA 19087

And if to Seller, at the address specified on the Order documentation or at such other address as either Party may from time to time designate in writing to the other.

31. LANGUAGE AND TRANSLATION. All communications and proceedings of any kind related to this Order shall be in the English language. The Parties acknowledge that only the English language version of this Order shall be executed and binding upon the Parties and that any translation of this Agreement shall be provided for convenience purposes only.

32. RECORD KEEPING; FINANCIAL RECONCILIATION. Seller will maintain all records of the Items and related services under the Order in an immediately retrievable format at all times for a period of at least three (3) months after completion or termination of the Order. After the conclusion of the Order, such records shall be stored by Seller and available for three (3) years unless otherwise specified in the Order or required by law. Prior to any destruction of the records, Seller shall make the records available for Buyer receipt. At the conclusion of the Order and before the final payment is made, Seller shall provide Buyer, upon Buyer's request, with a financial reconciliation of amounts paid by Buyer as agreed to in the Order. Interim financial reconciliations shall be provided to Buyer at Buyer's request. In the event Buyer has overpaid for the Items, Seller shall refund Buyer, as soon as reasonably practicable but in no event later than thirty (30) days after completion of the Order, any amounts already paid that are in excess of what Seller is due.

33. ITEM IDENTIFICATION AND TRACEABILITY. Where the Item is a product, material or other tangible deliverable, Item identification shall permit traceability to the specific Seller raw material or Item lot numbers, as well as the manufacturing, inspection and test records, as applicable. Seller shall utilize and ship Items on a first in first out basis (FIFO) basis. Unless otherwise specified in the Order, the Seller is expected to ship product Items with at least seventy five percent (75%) left on the vendor-specified shelf life/expiration date prior to shipment to Buyer and to ship product that has been manufactured within two (2) years from the date the product was ordered by Buyer. Batch sequence and/or manufacturing date must be identified by either a date code or batch/lot number. No exceptions to this requirement shall be permitted unless acknowledged in writing in advance by Buyer.