

## Sun GlassFish Subscription Agreement

This Sun GlassFish Subscription Agreement ("**Agreement**") is by and between Sun and Customer, both as identified in the Order Form. This Agreement and the Order Form collectively make up the entire agreement of the parties concerning Product (the "**Agreement**"). This Agreement is effective as of the Effective Date of the Order Form.

Notwithstanding the first sentence in the preceding paragraph, if no Sun entity is listed on the Order Form, then the Sun entity will be (a) Sun Microsystems International B.V., with its principle place of business located at Saturnus 1, 3824 ME Amersfoort, the Netherlands, if Customer's address on the Order Form is in EMEA as defined below; or (b) MySQL Americas, Inc., with its principal place of business located at 4150 Network Circle, Santa Clara, CA 95054 USA, if Customer's address on the Order Form is in any other country.

Customer desires to subscribe to Sun's GlassFish subscription offering, which is comprised of certain Sun software and services. Therefore, in consideration of the mutual promises, covenants, and conditions contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows.

### **1. Definitions.**

**"Confidential Information"** means any information disclosed by one party ("**Discloser**") to the other party ("**Recipient**") either in the course of performance under this Agreement or by specific reference to this Agreement, that the Discloser specifically identifies as "confidential" or "proprietary" prior to or at the time of disclosure or which the Recipient knows or reasonably should know to be confidential to the Discloser. Confidential Information, includes, but is not limited to any discount, price or other contract terms proposed or agreed between the parties; information given in writing and marked "confidential"; and information given over the phone or in person and confirmed in writing as "confidential".

**"Effective Date"** means, unless otherwise defined on an Order Form, the date on which Sun transmits written, faxed, or emailed acceptance of Customer's Product order placed pursuant to the Order Form.

**"EMEA"** means all member states of the European Union as well as Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire, Croatia, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Iceland, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia, Former Yugoslav Rep of Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Republic of Moldova, Mongolia, Morocco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Pakistan, Qatar, Reunion, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Somalia, South Africa, South Georgia & South Sandwich, Swaziland, Switzerland, Tajikistan, Tanzania, United Republic of Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Yemen, Zaire, Zambia and Zimbabwe.

**"Initial Term"** means the period set forth on the applicable Order Form, beginning upon the Effective Date.

**"Licensed Unit"** means the unit of measure by which Customer's use of Product is licensed, as described in the Order Form. A typical Licensed Unit is, without limitation, a Server, Socket, or User.

**"Order Form"** means the (a) the applicable Sun Order Form document signed by the parties or otherwise accepted by Sun, or (b) Customer's Product order placed via Sun's online store. If Customer has ordered Product through a third party, such as a reseller, then Order Form means such third party's order information as provided to Sun.

**"Product"** means Software and Services, collectively.

**"Renewal Term(s)"** means the successive one-year periods set forth in Section 5.1 or as otherwise agreed in writing by the parties.

**"Server"** means a single physical machine or blade server which processes data using one or more microprocessors, and which is owned, leased or otherwise controlled by Customer. Unless otherwise specified in this Agreement, in the event such a machine or blade server contains Virtual Servers each such Virtual Server is a separate Server.

**“Services”** means the Software support and software upgrade services provided by Sun.

**“Socket”** means a microprocessor receptacle in a machine or blade server owned, leased or otherwise controlled by Customer.

**“Software”** means the generally-available Sun software product(s) set forth in the applicable Order Form and as may be described at [http://www.sun.com/software/products/glassfish\\_portfolio/get\\_it.jsp](http://www.sun.com/software/products/glassfish_portfolio/get_it.jsp), including all Updates made generally available during the term of this Agreement.

**“Subscription Fee”** means the fees set forth in the applicable Order Form for Product and as stated in this Agreement. Subscription Fees for Renewal Terms shall be as provided on the relevant Sun price list.

**“Term”** means the Initial Term or a Renewal Term (both as defined above), as applicable.

**“Updates”** means bug fixes, updates and/or enhancements for Software that Sun may, in its sole discretion, provide to Customer as part of Services.

**“User”** means an individual end-user of Product.

**“Virtual Server”** means an operating system that has been emulated or does not run directly on physical hardware, such as by virtualization technology.

Other capitalized terms may be defined herein in the context in which they appear, and will have the indicated meaning throughout this Agreement (including any attachments, exhibits, addenda and the like, unless otherwise set forth therein).

## **2. License and Services.**

2.1 License. Sun grants to Customer a license to use Product on or by no more than the total number of Licensed Units for which Subscription Fees have been paid or will be paid pursuant to Section 3.2 (collectively **“Paid Units”**) in accordance with the following license grant. For each Paid Unit during each Term, Sun hereby grants to Customer a limited, non-exclusive and non-transferable right to (a) use Software that may be made available in source code form (at Sun’s discretion) solely for testing purposes; (b) use Software in object code form and Services solely in connection with Customer’s internal business operations; and (c) make copies of Software for back-up and archival purposes. If Customer’s business is being a service provider, such internal business operations include making Software functionality accessible (but not by providing Software or Services themselves or through outsourcing services) to Customer’s Users in an extranet deployment.

2.2 Restrictions. The license granted is subject to the following restrictions:

- (a) The copies of Software provided under this Agreement are licensed, not sold, by Sun. Sun and its suppliers reserve all rights not expressly granted in this Agreement;
- (b) Subject to Section 2.1 above or to any documentation accompanying the Software, Customer may not copy, modify, or distribute Software;
- (c) Customer may not rent, lease, lend or encumber Software;
- (d) Unless prohibited by applicable law, Customer may not decompile or reverse engineer Software;
- (e) This Agreement will apply to any Updates, unless such Updates contain a separate license;
- (f) Customer may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without the prior written consent of Sun;
- (g) Unless otherwise specified, if Software is delivered with embedded or bundled software (**“Bundled Software”**) that enables functionality of such Software, Customer may not use the Bundled Software on a stand-alone basis or use any portion of the Bundled Software to inter-operate with any programs(s) other than Software;
- (h) Software may contain programs that perform automated collection of system data and/or automated software updating services. System data collected through such programs may be used by Sun, its subcontractors, and its service delivery partners for the purposes of providing Customer with remote system services as applicable, and/or improving Sun’s software and systems;
- (i) Software may contain java technology. Customer may not create additional classes to, or modification of, the java technology, except under compatibility requirements available under a separate agreement available at [www.java.net](http://www.java.net); and

- (j) Portions of Software may be provided with open source code (and related notices) licensed from the global community of open source developers and third parties. Such open source licenses and notices govern the use of those portions of the Software. Any licenses granted hereunder do not alter any rights and obligations Customer may have under such open source licenses, however, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all Software provided hereunder.

**2.3 Services.** The scope of Services provided to the Customer under this Agreement is subject to the then-current Services details set forth at [http://www.sun.com/software/products/glassfish\\_portfolio/get\\_it.jsp](http://www.sun.com/software/products/glassfish_portfolio/get_it.jsp) (including sub-pages thereof). Customer agrees it will use or apply Services on no more than the quantity of Licensed Units set forth in this Agreement (including any quantity increases pursuant to Section 3.2). Any unauthorized use of Services will be deemed to be a material breach of this Agreement.

### **3. Delivery; Additional Servers.**

3.1 Customer shall obtain Software and Updates by download from a Sun website, using a Sun-provided web page address and password.

3.2 If, at any time during a Term, Customer increases the quantity of Licensed Units utilizing all or part of Product, no later than thirty (30) days after each such addition Customer shall notify Sun and pay the Subscription Fees applicable to such additional Licensed Units beginning from the first date of such utilization. All such additional Licensed Units will be covered under this Agreement coterminous with Customer's then-current Term. Subscription Fees for additional Licensed Units during a Term shall be calculated at the then-current annual per-Licensed Unit price prorated over the remaining period of such Term.

### **4. Fees; Payment; Taxes.**

4.1 **Fees.** Purchases made under this Agreement are irrevocable and Customer hereby commits to pay such Subscription Fees to Sun as set forth on the Order Form and in this Agreement. Subscription Fees are due upon the commencement of each Term and as set forth in Section 3.2 above for additional Licensed Units. If Subscription Fees are set forth in an Order Form as being paid annually or via specified multiple payments, then (a) for annual payments, Customer will pay such annual Subscription Fees to Sun upon the Effective Date and each anniversary of the Effective Date during the Term, or (b) for specified multiple payments, Customer will pay the specified Subscription Fees upon each specified payment due date. Sun will endeavor to invoice Customer at least thirty (30) days prior to the commencement of each Renewal Term.

4.2 **Payment Terms.** All fees under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from the date of Sun's invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in the quoted currency and are nonrefundable. Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), or at the highest rate permitted by applicable law (if lower), on the remaining amount required to be paid such interest to accrue on a daily basis from the payable date until the remaining amount is paid.

4.3 **Taxes.** All fees and prepayments are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind ("**Taxes**"). Customer shall be responsible for payment of Taxes imposed with respect to fees and prepayments arising out of or in connection with this Agreement, other than Taxes levied or imposed based upon Sun's net income and agrees to pay to Sun in addition to the stated fees any Taxes Sun is required by law to charge to Customer. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing Sun with an exemption certificate acceptable to the applicable authorities.

4.4 **Resellers.** Notwithstanding Sections 4.1, 4.2, and 4.3, in the event Customer orders Product from a Sun-authorized reseller then Product pricing and the recipient for Customer's payments shall be determined by Customer and such reseller.

### **5. Term and Termination.**

5.1 Unless terminated earlier as set forth below, (a) this Agreement shall commence on the Effective Date and continue for the Initial Term unless terminated earlier as set forth below, and (b) after the Initial Term this Agreement shall renew for successive one-year Renewal Terms (unless an alternative period is agreed in writing

by the parties), unless either party gives at least sixty (60) days notice of non-renewal prior to the expiration of the applicable Term.

5.2 Sun may terminate this Agreement upon written notice to Customer in the event of Customer's (a) unauthorized use of Product, (b) breach of the United States export regulations or the U.S. Foreign Corrupt Practices Act, or (c) subject to its obligations under Section 9 of this Agreement, should the Software become, or in Sun's reasonable opinion is likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation. Otherwise, either party may terminate this Agreement immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.

5.3 Upon termination of this Agreement, Customer's rights to use Product shall cease and Customer shall destroy all copies of Product in its possession and control and certify the same to Sun in writing. In addition, Customer shall have no further rights to receive or use Services and receive Updates. Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of this Agreement shall survive the termination of this Agreement for any reason.

**6. Proprietary Rights.** The intellectual property and proprietary rights of whatever nature in Product and related documentation, including derivative works, are and shall remain the exclusive property of Sun and/or its suppliers, and nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. Customer may refer to Product by its associated name, provided that such reference is not misleading and complies with Sun's Trademark and Logo Policies, which can be found at <http://www.sun.com/policies/trademarks>. Customer may not remove or alter any Sun trademarks, or co-logo Product. Customer agrees (a) that any use of Sun trademarks will inure to the sole benefit of Sun; and (b) it will not incorporate any Sun trademarks into Customer trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

**7. Warranty and Disclaimer.** Sun warrants that during each Term it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, **PRODUCT IS PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF PRODUCT. SUN AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. SUN AND ITS SUPPLIERS DO NOT WARRANT THAT PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.**

**8. Confidentiality.** A Recipient must keep Confidential Information confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees, contractors and third party providers performing services in furtherance of this Agreement and/or each party's internal activities that are obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the relevant Agreement. These obligations do not apply to Confidential Information which:

- (a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
- (b) is or becomes known to the public through no act or omission of the Recipient;
- (c) the Recipient develops independently without using Confidential Information of the other party; or
- (d) is disclosed in response to a valid court or governmental order, and then only to the extent required to comply with the court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

**9. Indemnification.**

9.1 Sun will defend at its own expense without limitation and, in addition, shall indemnify Customer from any unaffiliated third party claim that Customer's use of the Software furnished by Sun, when used within the scope of this Agreement, misappropriates a trade secret or infringes a copyright or registered patent owned by the third party in the U.S., Canada, Japan or any country that is a member of the European Union ("**Claim**"). Sun will pay

(a) counsel hired by Sun to defend the Claim; (b) the reasonable and verifiable out-of-pocket costs incurred directly by Customer in connection with defending the Claim and/or assisting Sun in the defense thereof; and (c) subject to Section 10, any damages finally awarded to such third party by a court of competent jurisdiction (after any appeals) or any settlements of the Claim to which Sun consents. The foregoing obligations shall be subject to Customer notifying Sun promptly in writing of any claim, giving Sun the exclusive control of the defense and settlement of the Claim, and providing all reasonable assistance in connection with the Claim without prejudicing Sun in any manner. Subject to the foregoing conditions, nothing in this Agreement shall prohibit Customer from hiring separate counsel, at its own expense.

9.2 If Sun receives information about claim related to Software, Sun may, at its expense but without obligation to do so, either: (a) procure for Customer the right to continue to use Software; (b) replace Software with a functional equivalent; (c) modify Software so that it becomes non-infringing (including disabling the challenged functionality); or (d) refund the unused portion of the Subscription Fees paid by Customer for the allegedly infringing Software during the then-current Term, and terminate the Agreement. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Software.

9.3 If as a result of a Claim, a court of competent jurisdiction issues a final injunction (which has not been appealed) against Customer's use of any part of Software, Sun will, at its sole option, perform one of the remedy options listed in Section 9.2. If Sun selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Software.

9.4 Sun shall have no liability for any Claim arising out of or relating to (a) Customer's use of the Software after Sun notifies Customer to discontinue use due to such a Claim; (b) the combination of the Software with a non-Sun application, product, data or business process; (c) damages attributable to the value of a non-Sun application, product, data or business process; (d) modifications to Software other than modifications made by Sun; (e) modifications made by Sun to Software in accordance with any designs, specifications or instructions provided to Sun by or on behalf of Customer; (f) continued use of any Software for which Sun has provided Customer with modifications or substitute Software if use of such modifications or substitute Software would have prevented the Claim; (g) use of the Software in a manner prohibited under the Agreement; or (h) any separate or component software to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing. Customer shall reimburse Sun for any costs or damages that result from any of the foregoing actions other than subsection (h).

9.5 The foregoing provisions of Section 9 state Sun's entire obligations and liability with respect to the infringement or violation of any third-party intellectual property right and, except for the duty to defend under Section 9.1, shall be subject to the limitations in Section 10 of this Agreement.

**10. Limitation of Liability.** TO THE FULL EXTENT ALLOWED BY ANY APPLICABLE LAW, EXCEPT FOR SUN'S OBLIGATION TO DEFEND UNDER SECTION 9.1, SUN'S LIABILITY TO CUSTOMER FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT RECEIVED FROM CUSTOMER DURING THE PREVIOUS TWELVE (12) MONTHS FOR THE SOFTWARE OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM UP TO A MAXIMUM OF TWO MILLION US DOLLARS (\$2,000,000). THE FOREGOING LIMITATION DOES NOT REDUCE CUSTOMER'S OBLIGATION TO PAY SUN THE FEES DUE AND OWING FOR THE PRODUCT(S). IN NO EVENT WILL SUN BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF ANY AGREEMENT (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUN HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.

**11. Audit Rights.** Customer agrees to maintain records of its compliance with the terms of this Agreement during the term of the Agreement and for a period of three (3) years thereafter. During the term of the Agreement and for three (3) years thereafter, Sun shall have the right (at Sun's own expense) to conduct periodic reviews of Customer's records relating to its reproduction and use of Product for the purpose of verifying Customer's compliance with the terms of this Agreement. Sun shall exercise this right upon no fewer than fifteen (15) days' prior written notice. Customer will provide Sun with reasonable accommodation for the review, including reasonable use of available office equipment and access to all relevant Customer personnel and records during

normal business hours. Sun shall deliver to Customer a copy of the results of any such review. If an underpayment is identified, Customer shall immediately pay the full amount of any underpayment plus interest as specified in Section 4.2. Customer shall also pay Sun the full costs of any review if the finding is that Customer has underpaid fees for the period audited in excess of five percent (5%) of the proper amount owed to Sun.

## **12. Miscellaneous.**

12.1 Force Majeure. A party is not liable under the Agreement for non-performance caused by events or conditions beyond that party's control if the party makes reasonable efforts to perform. This provision does not relieve Customer of its obligation to make payments then owing.

12.2 Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable: (a) the enforceability of the remaining provisions of this Agreement will not be affected; and (b) such provision will, to the extent possible, be restated to enable enforceability and reflect the original intention of the parties.

12.3 Relationship of the Parties. This Agreement does not create a partnership, agency, joint venture, franchise, fiduciary or employment relationship, and each party remains an independent contractor. Neither party may bind the other or express or imply a relationship in conflict with this section.

12.4 Governing Law; Venue. All disputes will be governed by the laws of California and controlling U.S. federal law. The venue for litigation will be the appropriate courts located in Santa Clara County, California. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.

12.5 Import and Export Laws. Customer acknowledges that the Product(s) may be subject to export and import control laws, and agrees to comply fully with those laws in connection with the Product(s). Customer agrees that the Product(s) is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certifies that it is not prohibited by the U.S. government from participating in export or re-export transactions.

12.6 Government Contracts. If Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("**DOD**") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Product and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Product or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

12.7 Assignment. Customer may not assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without Sun's prior consent (at Sun's sole discretion). Any attempt by Customer to assign this Agreement without Sun's prior consent, where such consent is required, shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

12.8 Publicity. Sun may publicly state that Company is a customer of Sun. Sun will not publicly state any of Company's purchase details, claims, quotes, endorsements or attributions without Company's prior written approval, such approval not to be unreasonably withheld.

12.9 Notices. All written notices and certifications required by this Agreement must be delivered in person or by means evidenced by a delivery receipt to the address specified in the Order Form (or as subsequently specified by written notice), to the attention of "Legal", and will be effective upon receipt. Notices to Sun must also be copied to Sun Microsystems, Inc. at 4150 Network Circle, Santa Clara, California 95054, Attn: MySQL Legal Group.

12.10 Non-Waiver. A waiver of any right under this Agreement must be made in writing and signed by the parties. Any express waiver or failure to exercise promptly any right under an Agreement will not create a continuing waiver or any expectation of non-enforcement.

12.11 Subcontracting. Sun may use subcontractors in performance of its obligations and will remain responsible for performance by such subcontractors.

12.12 Headings. The section headings in this Agreement are for convenience only and will not affect the interpretation of each accompanying clause.

12.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute but one and the same instrument.

12.14 Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. This Agreement cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter. Changes to any terms in the Agreement must be made in writing and signed by an authorized representative of each party. This Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof.