

1. TERMS OF AGREEMENT

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between Kymeta Corporation ("Kymeta") and the supplier (the "Supplier") identified in the Purchase Order. Kymeta's submission of the Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on Kymeta's agreement to such different or additional terms. Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a master agreement covering procurement of the Work described in the Purchase Order exists between Supplier and Kymeta, the terms of such master agreement shall prevail over any inconsistent terms herein.

2. DEFINITIONS

- 2.1 "Deliverables" means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Promised by Date.
- 2.2 "Promised by Date" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.
- 2.3 "Harmful Code" means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.
- 2.4 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 2.5 "Preexisting Materials" means any Intellectual Property Rights or tangible personal property of Supplier or Kymeta created before the date of this Purchase Order or outside the scope of this Purchase Order.
- 2.6 "Products" means tangible goods (including tangible Deliverables) specified in the Purchase Order to be delivered on or before the Promised by Date.
- 2.7 "Services" means the services that Supplier is to perform for Kymeta specified in the Purchase Order.

- 2.8 "Statement of Work" or "SOW" means the document specifying, without limitation, the scope, objective, and time frame of the Work that Supplier will perform for Kymeta.
- 2.9 "Subcontractor" means a third party performing Work under an agreement (a "Subcontract") with Supplier.
- 2.10 "Supplier Personnel" means Supplier's employees, consultants, agents, independent contractors and Subcontractors.
- 2.11 "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work.
- 2.12 "Work" means the Deliverables, Products and Services specified in the Purchase Order, including any SOW.

3. DELIVERY

- 3.1 Time is of the essence in Supplier's performance of its obligations under this Purchase Order. Supplier will immediately notify Kymeta if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. Kymeta's acceptance of Supplier's notice will not constitute Kymeta's waiver of any of Supplier's obligations. All deliveries made pursuant to this Agreement must be complete. Unless Supplier has obtained prior written approval from Kymeta, incomplete deliveries or late deliveries will not be accepted, nor will over-deliveries in excess of specified quantities.
- 3.2 If Supplier delivers Work after the Delivery Date, Kymeta may reject such Work.
- 3.3 Kymeta will hold any Work rejected under this Purchase Order at Supplier's risk and expense, including storage charges, while awaiting Supplier's returns shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges Kymeta incurs on Supplier's behalf.
- 3.4 Supplier will preserve, pack, package and handle the Products so as to protect the Products from loss or damage and in accordance with best commercial practices in the absence of any specifications Kymeta may provide. Kymeta reserves the right to refuse deliveries if there is any damage to packaging. The Supplier will be responsible for replacement or refund, if any Products are received with damage due to improper packaging. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.
- 3.5 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the Kymeta part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.
- 3.6 Unless Kymeta expressly instructs otherwise, Supplier will deliver all Work to Kymeta's facility at the address set forth the Purchase Order. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for the Products does not pass to Kymeta until acceptance in accordance with Section 6.

4. PRICE AND PAYMENT

- 4.1 Unless otherwise specified in the Purchase Order, the price for the Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges (“Charges”). Supplier will, at Kymeta’s request, break-out from the price all such Charges, in its invoices and/or on the Purchase Order. Except as expressly provided in the Purchase Order, Supplier will bear sole responsibility for all expenses incurred in connection with its performance pursuant to this Purchase Order.
- 4.2 Kymeta will pay Supplier the price (less any amount subject to a good faith dispute) in accordance with the payment terms set forth in the Purchase Order following the later of: (i) the Promised by Date; (ii) the date of Kymeta’s acceptance of all of the Work; or (iii) Kymeta’s receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier’s certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the Kymeta entity or affiliate identified in the Purchase Order is located, and if the price set forth in the Purchase Order is not in the local currency, then Kymeta will determine the local currency equivalent of the price as of date of payment. Kymeta may, at any time, set-off any amounts Supplier owes Kymeta against any amounts Kymeta owes to Supplier or any of its affiliated companies.

5. OWNERSHIP AND LICENSE

- 5.1 Unless otherwise specified in a SOW and except as provided in Section 5.2, Kymeta is the sole and exclusive owner of all Deliverables and Supplier hereby irrevocably assigns and transfers to Kymeta all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights. Supplier shall, at the request and expense of Kymeta, perform any acts that Kymeta may reasonably deem necessary or desirable to evidence, protect or confirm Kymeta’s ownership interest in the Deliverables and any intellectual property rights therein, including, but not limited to, making further written assignments in a form determined by Kymeta.
- 5.2 Unless otherwise specified in a SOW, each party owns all right, title, and interest in and to any of its Preexisting Materials. Supplier hereby grants Kymeta a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier’s Preexisting Materials in the Deliverables to the extent necessary for Kymeta’s exercise and exploitation of any of its rights in the Deliverables or otherwise to receive the expected benefits from the Work.
- 5.3 Unless otherwise specified in an SOW, Supplier will obtain and assign to Kymeta a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Third Party Intellectual Property Rights incorporated into, required to use, or delivered with the Work. Supplier will deliver copies of the above releases and licenses to Kymeta upon Kymeta’s request.

6. INSPECTION AND ACCEPTANCE

Kymeta may reject any or all of the Work which does not conform to the applicable requirements within 20 business days of Supplier’s delivery of the Work. At Kymeta’s option, Kymeta may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work; or (iii) require Supplier to repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), Kymeta may accept the non-conforming Work conditioned on Supplier providing a refund

or credit in an amount Kymeta reasonably determines to represent the diminished value of the non-conforming Work. Kymeta's payment to Supplier for Work prior to Kymeta's timely rejection of such Work as non-conforming will not be deemed as acceptance by Kymeta.

7. CHANGES

Kymeta may at any time make reasonable changes to the scope and requirements of the Services, or request Supplier to perform extra Services. Kymeta will promptly communicate such changes to Supplier. Supplier will, as soon as practicable thereafter, provide Kymeta with a change order or revised Purchase Order reflecting the changes requested by Kymeta, and a schedule for completion of such changed Services and any equitable adjustment for such change of scope ("Change Order"). If the terms of such Change Order are acceptable to Supplier and Kymeta, the Parties will execute the Change Order. If such changes are not acceptable to Supplier and Kymeta, then such Change Order will not take effect and the Services will remain unchanged. Any changes by Kymeta to its internal processes and/or policies that have general applicability, but which may impact Supplier's provision of Services will not require a Change Order.

8. REPRESENTATIONS AND WARRANTIES

8.1 Supplier represents and warrants that:

- (i) it has the full power and authority to enter into the Purchase Order and to perform its obligations under the Purchase Order;
- (ii) it has the right and unrestricted ability to assign the Work (including the associated intellectual property rights) to Kymeta including, without limitation, the right to assign any Work performed by Supplier Personnel and Subcontractors;
- (iii) the Work, and Kymeta's use of the Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;
- (iv) Supplier will not disclose to Kymeta, bring onto Kymeta's premises, or induce Kymeta to use any confidential or proprietary information that belongs to anyone other than Kymeta or Supplier which is not covered by a non-disclosure agreement between Kymeta and Supplier;
- (v) Software supplied by Supplier does not contain any Harmful Code;
- (vi) Supplier's Work conforms to Kymeta's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Work is suitable for the intended use;
- (vii) Supplier has read and complies with with the Supplier Environmental Health and Safety Requirements and other applicable safety and security policies posted on the Kymeta website;
- (viii) it will not use or disclose any information that may identify an individual ("Personal Data") that is processed for or on behalf of Kymeta, except to the extent necessary to perform its obligations under this Purchase Order;
- (ix) to the extent that Supplier processes Personal Data or holds Kymeta confidential information in its possession it will: (A) implement and maintain appropriate technical and organizational measures and other protections for Personal Data and Kymeta confidential information (including, without limitation, not loading any Personal Data or Kymeta confidential information provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless in each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) report to Kymeta any breaches of security of Personal Data or Kymeta confidential information immediately after discovery ("Security Incident"), (C) cooperate fully with Kymeta in investigating any Security Incidents , (D) cooperate fully with Kymeta's requests for

access to, correction of, and destruction of Personal Data or Kymeta confidential information in Supplier's possession, (E) comply with all instructions or other requirements provided or issued by Kymeta from time to time relating to Personal Data or Kymeta confidential information, and (F) permit Kymeta and/or its duly authorized representatives, on reasonable prior notice, to inspect and audit Supplier's business premises and computer systems to enable Kymeta to verify that Supplier is in full compliance with its processing obligations under this Purchase Order;

- (x) it will not transfer Personal Data across any country border unless it is (a) strictly unavoidable for the proper performance under this Purchase Order, and (b) notified to Kymeta in writing prior to any such transfer. Upon Kymeta's request, Supplier shall enter into such other arrangements with Kymeta as Kymeta considers appropriate (e.g. the EU Model Clauses) in order to ensure that Supplier's transfers are lawful.
- (xi) it will not provide Kymeta with Personal Data of any third party or its own employees. Notwithstanding the foregoing, if Supplier does provide Kymeta with any Personal Data, Supplier represents and warrants that it has obtained the necessary consent to provide that Personal Data to Kymeta and to allow Kymeta to use, disclose, and transmit such Personal Data on a worldwide basis among Kymeta and its affiliates in connection with this Purchase Order; and
- (xii) no Products contain or include components (a) containing PCB' (polychlorinated biphenyls) chemical substances, (b) manufactured using a cadmium plating process or contain a chemical substance or mixture that is or becomes subject to a reporting requirement under Section 8(e) of the Toxic Substances Control Act, 15 U.S.C. Section 2607(e), as in effect at time of shipment.

8.2 Kymeta warrants and represents to Supplier that it has the full power and authority to enter into the Purchase Order and to perform its obligations under the Purchase Order.

8.3 TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without Kymeta's prior written consent, which Kymeta will not unreasonably withhold. Kymeta may, at its option, void any attempted assignment or delegation undertaken without Kymeta's prior written consent.

9.2 Supplier may not subcontract any of its rights or obligations under the Purchase Order without Kymeta's prior written consent. If Kymeta consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify Kymeta for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by Kymeta or any third party and caused by the acts and omissions of Supplier's Subcontractors; and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for work performed, Kymeta will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold Kymeta harmless for all damages and costs of any kind, without limitation, incurred by Kymeta and caused by Supplier's failure to pay a Subcontractor.

9.3 To the extent allowed by applicable law, no person who is not a party to the Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

10. TERM AND TERMINATION

- 10.1 The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.
- 10.2 Kymeta may terminate this Purchase Order, any SOW, or both, at any time, for no reason or for any reason, upon 1 day written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform Kymeta of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to Kymeta whatever Work then exists. Kymeta will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that Kymeta will not be obligated to pay any more than the payment that would have become due had Supplier completed and Kymeta had accepted the Work. Kymeta will have no further payment obligation in connection with any termination.
- 10.3 Either party may terminate this Purchase Order, any SOW, or both, immediately by delivering written notice to the other party for any material breach not cured within 10 days of receipt of notice of the breach. Kymeta shall have no further payment obligation to Supplier under any terminated SOW if Kymeta terminates the SOW under this Section 10.3.
- 10.4 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

11. CONFIDENTIAL INFORMATION AND PUBLICITY

- 11.1 If Kymeta and Supplier have entered into a Non-Disclosure Agreement (“NDA”), then the NDA will be deemed to apply to disclosure of confidential information under the Purchase Order, and if the term of the NDA expires before the expiration or termination of the Purchase Order, then the term of the NDA shall be automatically extended to match the term of the Purchase Order. If no NDA is entered into between Kymeta and Supplier at the time a Purchase Order is executed, then Supplier shall comply with the non-disclosure provisions of **Annex A** attached hereto.
- 11.2 The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA.
- 11.3 Supplier shall obtain Kymeta’s written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to Kymeta.

12. INDEMNIFICATION.

- 12.1 As used in this Section 12, a “Cost” is any loss, damage, liability, cost or expense (including professional fees and costs as incurred) arising from a third party claim or demand (“Claim”) for which one party (the “Indemnifying Party”) may be obligated to defend, indemnify and hold the other party (the “Indemnified Party”) harmless.
- 12.2 Supplier shall defend, indemnify and hold Kymeta harmless from and against any and all Claims and Costs as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Subcontractors) in the performance of the Work; or (ii) any infringement of a third party’s Intellectual Property Rights or any other rights.

- 12.3 Kymeta shall indemnify and hold Supplier harmless from and against any and all Claims and Costs as incurred, arising out of or in connection with: (i) Supplier's use of Kymeta's products or services in connection with the Work; (ii) Supplier's use of information or materials provided to Supplier by Kymeta; or (iii) infringement a third party's Intellectual Property Rights or any other rights resulting from Supplier's adherence to Kymeta's written instructions.
- 12.4 Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).
- 12.5 The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnified Party's behalf.
- 12.6 If a third party enjoins or interferes with Kymeta's use of any Work, then in addition to Supplier's obligations under Section 12.2, Supplier will use its best efforts to promptly (i) obtain any licenses necessary to permit Kymeta to continue to use the Work; (ii) replace or modify the Work as necessary to permit Kymeta to continue to use the Work at the same levels of functionality and performance; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Kymeta the amount paid for any Work for which a third party enjoins or interferes with Kymeta's use of the Work.
- 12.7 Nothing in this Section shall limit any other remedy of the parties.

13. LIABILITY

- 13.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, KYMETA WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT KYMETA PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.
- 13.2 IN NO EVENT WILL KYMETA BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT KYMETA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 13.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

14. INSURANCE

Unless insurance requirements are specifically determined on a case by case review, Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect Kymeta in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain

such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

15. COMPLIANCE WITH LAWS

Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Purchase Order. In particular and without limitation, Supplier shall not act in any fashion or take any action that will render Kymeta liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Kymeta in retaining or obtaining business or in performing the Work. Without limiting the foregoing, to the extent that Supplier is a US federal contractor or covered subcontractor as contemplated in accordance with the applicable laws and regulations, then Supplier agrees that this Purchase Order will be subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, and the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference. The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities. Supplier's failure to comply with this provision shall constitute a material breach of this Purchase Order. Supplier warrants that it will provide to Kymeta any information and assistance necessary for Kymeta to comply with any laws or regulations applying to the incorporation of Conflict Minerals in any Product, including but not limited to the completion of a Conflict Minerals survey provided by Kymeta. Supplier further warrants that, to the extent it may be requested or required to provide any reports, certifications or other information on the incorporation of Conflict Minerals in any Product, it has and will conduct reasonable diligence as necessary to confirm compliance with such requests and requirements.

16. GOVERNING LAW

The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Washington, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for King County, Washington, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

17. GENERAL

17.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.

17.2 If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:

17.2.1 A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favor of the Purchase Order.

17.2.2 A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.

17.2.3 A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW

will be resolved in favor of the SOW.

- 17.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- 17.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.
- 17.5 Neither Party shall be liable nor deemed to be in default for any delay, interruption or failure in performance under this Agreement deemed resulting, directly or indirectly, from Acts of God, civil or military authority, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, riots, civil disturbances, strike or other work interruptions by either Party's employees, or any similar or dissimilar cause beyond the reasonable control of either Party. However, both Parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. In the event Kymeta determines that it is unable to substantially perform under the Agreement because of any of the forgoing reasons or events, it may terminate the Agreement upon ten (10) days written notice to Supplier. If Kymeta terminates hereunder, Kymeta shall receive a refund of any amounts paid to Supplier in advance for supplies, equipment or services not received by Kymeta prior to the date of termination. If Supplier terminates hereunder, Kymeta shall still be obligated to remit payment to Supplier for any supplies, equipment or service received by Kymeta prior to the date of termination.

ANNEX A

Confidentiality Agreement

The terms of this Annex A shall apply to Supplier upon acceptance of a Purchase Order as provided in Section 1 above, if Supplier and Kymeta are not otherwise a party to an NDA. Kymeta desires to protect from unauthorized copying, use and disclosure all confidential or proprietary information that it may disclose to Supplier.

1. Supplier shall, with regard to all information and materials of Kymeta received or otherwise observed or learned by Supplier in the course of the discussions described above, whether or not the same is marked "confidential" (collectively, the "Confidential Information"):
 - (a) Use the Confidential Information solely for purposes of supplying Deliverables to Kymeta, or such other purposes as Kymeta may specifically authorize in writing (the "Permitted Purposes");
 - (b) Refrain from making any copies of the Confidential Information without Kymeta's prior written approval;
 - (c) Take all necessary precautions and measures to maintain the confidentiality of the Confidential Information;
 - (d) Only disclose or furnish the Confidential Information to a person or entity with a reasonable need to know for the Permitted Purpose, who have been informed that the Confidential Information belongs to Kymeta, and who have signed or are subject to non-disclosure agreements with Supplier with non-use and non-disclosure terms substantially similar to those contained in this Agreement; and
 - (e) Return the Confidential Information, including all copies, drawings, documents and other manifestations containing any Confidential Information, to Kymeta upon request.
2. Impermissible Uses. Absent explicit written consent from Kymeta, the Supplier will not use or disclose the disclosing Party's Confidential Information, in whole or in part, to:
 - (a) Manufacture itself or to enable the manufacture by any third party of Kymeta's products, products similar thereto, or products derived therefrom;
 - (b) Decompile, disassemble, decode, reproduce, redesign, or reverse engineer any products or equipment of Kymeta or any part thereof;
 - (c) Perform any services, including services relating to Kymeta's products or equipment;
 - (d) Deliver under a contract or make subject to a "rights in data" clause or equivalent clause.
3. Supplier acknowledges that the Confidential Information consists of valuable trade secret and other proprietary rights of Kymeta and others. Supplier understands that no license or other right under any patent, copyright, trade secret, trademark or other proprietary right of Kymeta or any third party is granted or implied by Kymeta's disclosure of the Confidential Information to Supplier.
4. Supplier shall not remove, obscure or alter any notice of patent, copyright, trademark, trade secret or other proprietary right from any document, software or other item containing any Confidential Information without Kymeta's prior written authorization.
5. Supplier acknowledges that disclosure or use of the Confidential Information in violation of the terms of this Agreement could cause irreparable harm to Kymeta for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Accordingly, Supplier agrees that Kymeta shall have the right, in addition to its other rights and remedies, to seek injunctive relief for any violations of this Agreement by Supplier.
6. Supplier shall have no obligation to maintain the confidentiality of any Confidential Information that:
 - (a) Was known to Supplier before the disclosure of the Confidential Information by Kymeta, or
 - (b) Was received by Supplier on a non-confidential basis from a third party who was legally entitled to make such disclosure.
7. If Supplier is required by any governmental agency or other government regulatory authority having jurisdiction over Supplier or required by law or pursuant to legal process to disclose any Confidential Information, the Supplier shall be permitted to make such disclosure, provided Supplier shall exercise reasonable efforts to provide Kymeta with prompt written notice of any such request or requirement pursuant to legal process, to the

extent legally permissible and practicable under the circumstances, so as to enable Kymeta to seek a protective order or other appropriate remedy or waive compliance with this Agreement (at its own expense). If such a protective order or other remedy is not obtained, or if Kymeta waives compliance with this Agreement, the Supplier may disclose Confidential Information, but only such Confidential Information as it is required to disclose in the reasonable opinion of legal counsel to the Supplier, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed.

9. **Supplier Affiliates.** Supplier affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with either party. The parties agree that Confidential Information will not be disclosed to affiliates in jurisdictions whose laws and regulations may materially impair the affiliates' compliance with the terms of this Agreement. Further, the parent company(ies) of any such affiliates shall be responsible for compliance by such affiliates with this Agreement.