

**EXCELITAS NOBLELIGHT AMERICA LLC  
TERMS AND CONDITIONS  
OF PURCHASE**

**1. General**

**1.1** This Purchase Agreement applies to sales by Seller to any of the Excelitas entities listed on the last page of this Purchase Agreement (each entity, “**Excelitas**”). This Purchase Agreement consists of, in order of precedence: the Excelitas Purchase Order or Statement of Work (each, a “**Purchase Order**”) (typed portions control over pre-printed portions), the Product Specifications, and these Terms and Conditions (collectively, the “**Purchase Agreement**”). Conflicting or additional terms and conditions presented at any time by Seller will be considered proposals that go into effect only to the extent accepted in writing by Excelitas. Under this Purchase Agreement, Seller agrees to sell and Excelitas agrees to purchase certain goods or products (together, “**Goods**”), or services (“**Services**”) as described on the face page of the Purchase Order. Seller’s provision of the Goods or Services to Excelitas is governed solely by this Purchase Agreement.

**2. Orders, Acceptance**

**2.1** A Purchase Order will be deemed accepted by Seller upon the earlier of Seller’s (a) written acceptance of the front page of the Purchase Order, (b) shipment of any Goods, (c) initiation of performance of any Services, or (d) failure to provide written notice of rejection to Excelitas within five business days after Excelitas issues the Purchase Order or instructions. Excelitas may revoke or make any changes to the Purchase Order until accepted by Seller.

**3. Price, Taxes and Payment**

**3.1 Purchase Price.** Seller must bill Excelitas for the Goods or Services at the lower of: the price last quoted; or the prevailing market price. Without Excelitas’s specific written authorization, Seller may not fill the Purchase Order or charge Excelitas a higher price. The price of Goods or Service must account for the applicable shipping terms.

**3.2 No Extra Charges.** No additional charges of any kind, including charges for boxing, packing, cartage, or other extras will be allowed unless Excelitas specifically agrees in writing and in advance.

**3.3 Taxes.** Seller is responsible for the payment of any taxes related to the purchase of Goods or Services hereunder, as well any custom duties, value added tax or similar tariffs and fees, unless otherwise agreed to in writing by Excelitas. Excelitas will provide a valid exemption certificate authorized by the appropriate governmental authority at Seller’s request for any tax-exempt transactions.

**3.4 Payment Terms.** Excelitas’s payment terms are Net

60 unless otherwise agreed to by Excelitas in writing.

**4. Quality, Packing and Documentation**

**4.1 Quality of Goods.** Seller agrees, represents, and warrants that all Goods supplied under this Purchase Agreement will be manufactured in strict accordance with the applicable Excelitas specifications and requirements. Goods must consist only of new materials, unless otherwise specified. No changes or substitutions can be made in the raw materials, manufacture, processing, testing, or inspection of Goods without notifying Excelitas in writing and subsequent written approval by Excelitas. Excelitas reserves the right to withhold approval and reject Goods that have been changed without prior authorization.

**4.2 Packaging of Goods.** Goods must be packaged securely, and each shipment must include documentation stating the exact quantities and description of the Goods shipped. In the absence of such documents, Excelitas’s count and verification will be deemed final. Applicable quality and compliance certifications will accompany each shipment of Goods, unless otherwise specified on the front page of the Purchase Order. Seller must show the Excelitas order number on the exterior of all shipping containers, packages, invoices, bills of lading and other shipping documents. Packing slips must be included in all shipments and last copy must state “**ORDER COMPLETED.**”

**4.3 Service Standards.** Seller will assign personnel who are experienced and skilled in their profession in accordance with industry best practices and standards to perform Services. Excelitas may, for good cause shown in Excelitas’s sole determination, require Seller to withdraw any assigned personnel and require that Seller promptly provide replacement personnel satisfactory to Excelitas.

**4.4 Service Conditions.** Seller and its assigned personnel will perform the Services with due diligence, following the processes and procedures agreed to with Excelitas in the Purchase Agreement, and in accordance with applicable law and industry best practices and standards.

**5. Delivery, Risk of Loss and Title**

**5.1 Delivery, Risk of Loss and Title.** Seller will deliver Goods or perform Services in strict accordance with the terms of this Purchase Agreement and as designated in the Purchase Order. Unless otherwise stated in the Purchase Order, Goods will be delivered DDP “Point of Use” (Incoterms 2020) Excelitas’s designated facility. Seller will retain title and risk of loss, and will further bear responsibility for warehousing and insurance, until receipt of Goods by Excelitas at the designated facility. Title will transfer to Excelitas upon receipt.

**5.2 Time is of the essence.** Excelitas requires the

ordered Goods or Services on the date specified to ensure an efficient conduct of its operations. Seller must report to Excelitas immediately any anticipated delay in shipment or delivery. Excelitas reserves the right to terminate the Purchase Order in whole or in part, with no liability to Seller, should Seller fail to make deliveries in accordance with the terms of this Purchase Agreement.

## 6. Inspection and Acceptance

**6.1 Inspection.** Excelitas reserves the right to inspect and reject any Goods or Services it receives. Defective or non-conforming Goods or Services will be held for Seller's instruction at Seller's risk and, if Seller so directs, will be returned at Seller's expense. Payment for any Goods or Services prior to inspection does not constitute acceptance. Payment, if made, is without prejudice to any and all Excelitas claims against Seller.

**6.2 Seller Response Time.** Seller must respond to any quality-related notice from Excelitas within two business days of receipt by Seller's relevant product division. Seller will handle any remediation of quality-related issues in accordance with the reasonable instructions of Excelitas.

## 7. Cancellation

**7.1 Upon Notice.** Excelitas reserves the right to cancel, on 15 days prior written notice to Seller, all or any part of the undelivered portion of any order without any liability of Excelitas to Seller.

**7.2 Upon Breach.** Notwithstanding any provision to the contrary, Excelitas may cancel any Purchase Order or terminate this Purchase Agreement by written notice to Seller immediately upon the occurrence of any of the following:

(1) if Seller has breached, or Excelitas reasonably believes that Seller has breached, any provision pertaining to disclosure, misuse or transfer of Confidential Information under Section 16.1 below;

(2) the dissolution of Seller;

(3) the insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for Seller's business, or an assignment of Seller's assets for the benefit of its creditors;

(4) the non-permitted assignment, or attempted non-permitted assignment, by Seller of any interest in this Purchase Agreement without the prior written consent of Excelitas; or

(5) if Seller sells its business to a third party either through a stock or equity ownership transfer or through a sale of substantially all of its assets.

## 8. Change of Manufacturing Process

**8.1** Seller must provide reasonable prior written notice to Excelitas: of any changes to the manufacturing process or manufacturing location of the Goods that may materially affect the fit, form or function of the Goods; or of Seller's plans to discontinue production of any Goods, subject to Excelitas's right, however, to make a "final buy" of up to one year's supply of such Goods before Seller discontinues production.

## 9. Warranty, Indemnity and Other Obligations

**9.1 Warranty of Goods.** Seller warrants and covenants that all Goods: (a) will conform to the description or specifications furnished by Excelitas; (b) will be free from defects in materials, design and workmanship; (c) will be of merchantable quality for a period of not less than 365 days after delivery to Excelitas; and (d) will be delivered to Excelitas free and clear of any security interest, lien or encumbrance. The warranties under this Section 9.1 will survive delivery and cannot be deemed waived either by reason of Excelitas's acceptance of or payment for Goods. Any deviation from the warranties under this Section 9.1 must be approved in writing by Excelitas.

**9.2 Warranty of Services.** Seller warrants and covenants that all Services: (a) will be performed in accordance with Sections 4.3 and 4.4; (b) will (i) conform to their description or written specifications furnished by Excelitas; and (ii) be free from defects in design and workmanship; and (c) will be delivered to Excelitas free and clear of any security interest, lien or encumbrance.

**9.3 Warranty Claims.** If Seller delivers Excelitas defective or non-conforming Goods or Services, Excelitas may, at its option (a) accept some or all of the Goods or Services with a claim for damages against Seller associated with the defect or non-conformance, (b) reject some or all of the Goods or Services and terminate further deliveries, or (c) at Excelitas's sole option, require Seller to promptly repair or replace the Goods or reperform Services at Seller's sole cost. Excelitas may also fix any defect or non-conformance, with Seller reimbursing Excelitas for the associated costs.

**9.4 Returns.** If Seller is unable to replace Goods or reperform Services under Section 9.2 within ten days of Excelitas's notice, Excelitas may return or reject such Goods or Services to Seller immediately and Seller must promptly refund to Excelitas all monies paid by Excelitas to Seller for such Goods or Services.

**9.5 Non-Infringement.** Seller warrants and covenants that the Goods or Services do not and will not infringe or misappropriate the patent, trademark, copyright, trade secret or other intellectual property rights of any third party.

**9.6 No Litigation.** Seller warrants that it has not been threatened with, is not currently involved in, and, during the preceding 24 months, has not been a party to any litigation with respect to Goods or Services.

**9.7 Infringement Indemnification.** Seller shall indemnify and defend Excelitas, its affiliates and their respective officers, directors, employees and agents from and against any actual or threatened legal or administrative action, claim, liability, penalty, fine, assessment, lawsuit, litigation, or other loss, expense or damage directly or indirectly resulting from or based upon: alleged infringement of any intellectual property rights of a third party by the Goods or Services purchased under this Purchase Agreement. Seller may meet its obligation under this Section 9.7 if Seller obtains a license for Excelitas, its affiliates and their respective customers to continue to use, manufacture, market and sell any product incorporating the purportedly infringing Goods or Services.

**9.8 General Indemnification.** Seller shall indemnify and defend Excelitas, its affiliates and their respective officers, directors, employees and agents from and against any actual or threatened legal or administrative, action, claim, liability, penalty, fine, assessment, lawsuit, litigation, or other loss, expense, or damage directly or indirectly resulting from or based upon: (a) defective manufacture or labeling of Goods; (b) failure of Goods or Services to meet the applicable written specifications; (c) personal injury or property damage caused Goods, Services, or Seller performance under this Purchase Agreement; and (d) breach by Seller of any warranty under this Purchase Agreement, including but not limited to the warranties under Sections 9.1 and 9.2.

## **10. LIMITATION OF LIABILITY**

**10.1** IN NO EVENT SHALL EXCELITAS BE LIABLE TO SELLER OR SELLER'S AGENTS OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS PURCHASE AGREEMENT, WHETHER OR NOT EXCELITAS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## **11. Excused Performance**

**11.1** If Seller fails to deliver Goods or Services due to a force majeure cause, such as fire, flood, earthquake or other natural or man-made acts beyond its reasonable control, Excelitas may either: (a) terminate this Purchase Agreement or any part hereof as to the Goods or Services not shipped or performed, respectively; or (b) suspend the Purchase Agreement in whole or in part for the duration of the delaying

cause and purchase Goods or Services sufficient to cover and deduct the cost from any commitment to Seller the quantity so purchased.

## **12. Offset**

**12.1** Excelitas may offset against Seller's account any claims, refunds or other damages due to Excelitas.

## **13. Severability**

**13.1** If any provision of this Purchase Agreement is prohibited by law, or held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

## **14. Waiver**

**14.1** No failure by Excelitas or Seller to enforce or take advantage of any provision under this Purchase Agreement will constitute a waiver of the right subsequently to enforce or take advantage of such provision.

## **15. Governing Law, Arbitration and Venue**

**15.1 Governing Law.** This Purchase Agreement will be construed in accordance with and governed solely by the laws of the State of New York, without regard to its conflict of laws rules and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

**15.2 Mediation and Venue.** Excelitas and Seller will first endeavor to resolve through good faith negotiations any dispute arising under or relating to this Purchase Agreement. If a dispute cannot be resolved through good faith negotiations within a reasonable time, any actions brought under this Purchase Agreement will have venue solely in the United States District Court for the Southern District of New York or in the Supreme Court of New York County, New York. Excelitas and Seller waive any objection to venue and jurisdiction of such courts.

**15.3 Arbitration.** Excelitas and Seller may agree to resolve any dispute arising out of this Purchase Agreement by binding arbitration administered and resolved by the American Arbitration Association ("AAA"). Any such arbitration must be conducted by a single arbitrator in accordance with the Commercial Arbitration Rules of the AAA, including the Optional Rules for Emergency Measures of Protection, in effect at the time the arbitration is commenced (except as modified in this Purchase Agreement). Any arbitration award must be issued within one year from the date claimant files its notice of intention to arbitrate (i.e. the demand), and the arbitrator must agree to comply with this schedule before accepting appointment. Any evidentiary hearing must be held on consecutive hearing days. Any monetary award in the arbitration must include

pre-award interest at the rate of one and a half percent (1.5%) per month from the time of the acts giving rise to the award. Judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

## **16. Confidential Information and Property Ownership**

**16.1 Disclosure.** Excelitas may provide to Seller certain information (written and verbal), intellectual property, supplies, drawings, software, specifications, tools, equipment, molds, fixtures and other proprietary items as Excelitas may determine necessary for Seller to fulfill the applicable Purchase Order (“**Confidential Information**”). Confidential Information is Excelitas property and is confidential. Seller undertakes to protect Confidential Information with the same degree of care as it uses for its own confidential information, but no less than reasonable care. Without Excelitas’s prior written consent, Seller will not (a) disclose any Confidential Information, including the terms of this Purchase Agreement, except to its employees as necessary for Seller to perform its obligations under this Purchase Agreement, (b) use any Confidential Information except as necessary for Seller to perform its obligations under this Purchase Agreement, or (c) transfer any Confidential Information to a third party.

**16.2 Return.** Upon completion of the transactions under the applicable Purchase Order, at Excelitas’s written direction, Seller must destroy or return any Confidential Information or copies. Seller assumes liability for loss, damage or misuse of any Confidential Information. If Excelitas reasonably requests, Seller must execute a more extensive confidentiality agreement with Excelitas to protect Confidential Information.

**16.3 No License.** Except as provided in this Purchase Agreement, Excelitas is not granting Seller a license to any Confidential Information.

**16.4 Injunction.** Excelitas may seek injunctive relief to enforce this Section 16.

**16.5 Ownership.** Excelitas retains all rights, title, and interests to all Confidential Information and any other information derived from the Confidential Information during the manufacture of Goods for or delivery of Services to Excelitas. Seller will not cause or permit any lien, encumbrance or other security interest to be asserted against any Excelitas property.

## **17. Compliance with Laws; Excelitas Code of Conduct**

**17.1 Compliance with Laws.** In filling any Purchase Order, Seller shall comply with all applicable federal, state and local laws, government regulations and orders, including without limitation concerning: (a) manufacture, sale, delivery, or use of the Goods or Services; (b) occupational

safety and health; (c) protection of persons and property from death, injury or damage; (d) labor and employment, including equal employment opportunity; (e) tax; (f) export control; (g) the environment and the use, handling, storage, labeling, and disposal of toxic or hazardous materials; and (h) money laundering, bribery, anti-terrorism, trade embargos, and economic sanctions.

**17.2 Equal Opportunity and Affirmative Action.** Excelitas is an equal opportunity employer and federal contractor or subcontractor. As applicable, Excelitas and Seller must abide by the requirements of 41 CFR Section 60-1.4(a); 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements, and that these requirements are incorporated herein. Section 60-300.5 and 60-741.5 require that covered prime contractors and subcontractors ensure nondiscrimination and take affirmative action in employment to employ and advance qualified individuals without regard to their physical or mental disability and protected Veteran status.

**17.3 Excelitas Code of Conduct.** Excelitas has adopted certain principles for the responsible conduct of its business as expressed in the Excelitas Code of Conduct, a copy of which has been made available to Seller. Seller shall perform under this Purchase Agreement in accordance with the Excelitas Code of Conduct.

**17.4 Compliance Indemnification.** Seller shall indemnify and defend Excelitas, its affiliates and their respective officers, directors, employees and agents from and against any claims, losses, damages, liability and costs arising out of any claim, suit or action alleging conduct by Seller in breach of the covenants under this Section 17.

## **18. Most Favored Customer**

**18.1** Each element of price, warranties, benefits and other terms provided to Excelitas under this Purchase Agreement are and will remain at least equal to the terms that have been offered or will be offered by Seller to its other customers. If Excelitas learns that Seller has provided or will provide better terms than those provided to Excelitas under this Purchase Agreement, Excelitas may seek the same or better terms from Seller. If Seller fails to provide such terms, Excelitas may terminate this Purchase Agreement.

## **19. Notices**

**19.1** Unless otherwise noted, all notices or correspondence pursuant to this Purchase Agreement must be sent (or faxed with a follow up copy sent) to the address or number and to the contact on the Purchase Order or to such

other address as may be designated by Excelitas.

## **20. Miscellaneous**

**20.1 Headings.** The headings contained in this Purchase Agreement are for reference only and are not to be construed to affect construction or interpretation of this Purchase Agreement.

**20.2 Entire Agreement.** This Purchase Agreement, and the documents referenced in this Purchase Agreement, including any specifications, constitute the entire understanding and agreement between Excelitas and Seller, and supersede all prior or contemporaneous oral or written negotiations and agreements with respect to the subject matter of this Purchase Agreement. Conflicts in terms will be resolved in the following order of precedence: (a) customized terms of the Purchase Order; (b) this Purchase Agreement; and (c) any written agreement signed by authorized representatives of Excelitas and Seller expressly amending this Purchase Agreement. No modification, change or amendment of the Purchase Agreement will be valid unless made in writing and signed on behalf of Excelitas and Seller by their respective duly authorized officer or representative.

**20.3 No Third-Party Beneficiaries; Assignment.** This Purchase Agreement is entered into solely for the benefit of Excelitas and Seller, and no other person will acquire the right to enforce any provision of this Purchase Agreement against either party. Neither Excelitas nor Seller may assign this Purchase Agreement to a third party without the prior written consent of the other party except, with prior notice: (a) to an affiliate; or (b) to a third party who will acquire, by sale of assets, merger or otherwise, all or substantially all of the assets of such party. The assigning party will remain obligated to perform under this Purchase Agreement notwithstanding such assignment.

**20.4 Survival.** All provisions that are continuing in nature, including but not limited to those involving confidential information and indemnity, will survive termination of this Purchase Agreement.

**20.5 Remedies.** Excelitas's rights and remedies are cumulative and in addition to any other rights and remedies provided by law or equity (or provided under the Uniform Commercial Code except to the extent modified herein).