

PO Terms and Conditions

Effective Date:12/1/15

This Purchase Order ("PO") is Enevate Corporation's ("Purchaser") offer to purchase from Seller the goods and/or services which are described on the face of the Order.

- 1. ACCEPTANCE AND TERMS AND CONDITIONS:** Seller accepts this Order and any amendments by signing the acceptance copy and returning it to Purchaser promptly. Even without such written acknowledgment, Seller's full or partial performance under this Order will constitute acceptance of these terms and conditions. By acceptance of this Order, Seller agrees to be bound by, and to comply with all the terms and conditions of this Order, which includes any supplements to it, and all specifications and other documents referred to in this Order. These terms and conditions apply to everything listed in this Order and constitute Purchaser's offer to Seller, which Purchaser may revoke at any time before Seller accepts it. This Order is not an acceptance by Purchaser of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation, or proposal will not constitute a modification of any of these terms and conditions. Terms and conditions different from or in addition to these terms and conditions, whether contained in any acknowledgment of this Order, or with delivery of any goods or services under this Order, or otherwise, will not be binding on Purchaser, whether or not they would materially alter this Order, and Purchaser hereby rejects them. These terms and conditions may be modified only by a written document signed by duly authorized representatives of Purchaser and Seller.
- 2. TERM/TERMINATION:** This Agreement shall commence on the Effective Date and continue thereafter, unless terminated earlier. If either party materially breaches this Agreement, the other party may terminate this Agreement by giving the breaching party thirty (30) days written notice of such breach, unless the breach is cured within the notice period. Buyer also may terminate this Agreement at any time, with or without cause, upon 60 days' written notice. Upon termination (except if Buyer terminates for a material breach by Supplier in which case no further payment is required and all monies paid by Buyer to Supplier will be returned to Buyer within 5 business days), Buyer agrees to pay Supplier all amounts (and only those amounts) due and payable for: (i) Deliverables accepted by Buyer in accordance with Section 1 (to the extent not already paid), and (ii) any actual and proven necessary costs incurred by Supplier (at Supplier's standard time and materials rates) for properly performed work towards providing the Deliverables under the Statement of Work up until the termination date, ("Additional Costs"); Upon any termination, each Party shall return to the other Party any and all Proprietary Information of the other Party.
- 3. PRICE:** This Order must not be filled at a price higher than shown on the face of the Order. If no price is set forth on the front of the Order, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, goods and services ordered under this Order will not be billed at a higher price than last quoted or charged without Purchaser's specific written authorization. Purchaser will be entitled at all times to set off any amount owed at any time by Seller or any of its affiliates to Purchaser or any of its affiliates against any amount payable at any time by Purchaser in connection with this Order. No extra charges of any kind will be allowed unless specifically agreed to in writing by the Purchaser. All applicable taxes arising out of transactions contemplated by the Order will be borne by Seller except as otherwise specified by the parties in writing. Seller warrants to Purchaser that the prices for the goods or services sold to Purchaser under this Order are not less favorable than those currently extended to any other customer for the same or similar goods and/or services in equal or less quantities. If Seller reduces its prices for such goods and/or services during the term of this Order, Seller shall

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correspondingly reduce the prices of goods and/or services sold thereafter to Purchaser under this Order.

4. **INVOICES AND PAYMENT:** Invoices shall be rendered in duplicate and shall contain the Purchase Order Number, item number, description of goods or services, quantities, unit prices, and total purchase price. All taxes shall be stated separately. Payment shall be made on the terms of net 30 days. Cash discount periods shall be computed from either the date of actual delivery of the goods or the date an acceptable invoice is received, whichever is later. All claims for money due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's Orders with Seller.
5. **PACKAGING:** All goods must be packaged in the manner as specified by Purchaser and shipped in the manner and by the route and carrier designated by Purchaser. If Purchaser does not specify the manner in which the goods must be packaged, Seller shall package the goods so as to avoid any damage in transit. If Purchaser does not specify the manner of shipment, route or carrier, Seller shall ship the goods at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in this Order.
6. **INSPECTION:** All goods and services will be subject to inspection and test by Purchaser and its customer at all times and places, including the period of manufacture and in any event prior to final acceptance. Final acceptance or rejection of the goods or services will be made as promptly as practical after delivery except as otherwise provided in this Order, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods or services as are not in accordance with this Order nor impose liabilities on Purchaser for them. Purchaser's payment for the goods shall not constitute its acceptance of the goods. Goods rejected and goods supplied in excess of quantities ordered may be returned to the Seller at its expense. Payment, if any, made for any good rejected hereunder shall be promptly refunded by Seller. Seller will provide and maintain an inspection and process control system acceptable to Purchaser and its customer covering the goods and services ordered. Records of all inspection work by Seller will be kept complete and available to Purchaser and its customer during the performance of this Order and for seven (7) years after Seller's completion of this Order. If any of the goods or services are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, then Purchaser, in addition to such other rights and remedies it may have by contract or by law or equity, at its sole discretion may reject and return such goods at Seller's expense, require Seller to inspect the goods and remove nonconforming goods and/or require Seller to replace nonconforming goods or services with conforming goods or services. If Seller fails to make the necessary inspection, removal and replacement in a time and manner satisfactory to Purchaser, Purchaser may at its option inspect and sort the goods; Seller will pay any related costs.
7. **WARRANTIES:** Supplier represents, warrants and agrees: (a) that the manufacture of all Deliverables will be performed in a professional manner and solely by employees of Supplier who have a level of skill commensurate with the requirements of this Agreement and who have signed binding enforceable agreements sufficient to allow Supplier to make the assignments and licenses made or contemplated by under this Agreement and to otherwise fulfill its obligations under this Agreement; (b) that each Deliverable shall (i) be state-of-the-art in terms of science and technology at the time of delivery, (ii) perform in accordance with the applicable specifications therefor and (iii) be suitable for the purpose intended for twelve (12) months after Buyer's acceptance of each Deliverable; (c) that the Deliverables shall not contain any code, programming instruction or set of

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instructions that may damage, disable, impair, or interfere with or otherwise adversely affect or provide access to computer programs, data files, or hardware without the consent and intent of the authorized device user; (d) that Supplier has full power, right and authority to enter into this Agreement, to carry out its obligations under this Agreement, and to grant the rights granted to Buyer herein, including without limitation, the rights to the Deliverables developed under this Agreement; (e) that, except as expressly and explicitly disclosed to and agreed to by Buyer in advance in writing in each instance, none of any Deliverables or the development will use or embody or infringe or violate any intellectual property or rights of any third party (including, without limitation, any public domain or open source software) and (f) that Supplier has not previously or otherwise granted, nor will it in the future grant, any rights to any third party which conflict with the rights herein granted by Supplier. Supplier will indemnify Buyer from any loss, damage, settlement or other expense due to (i) a breach of any of the foregoing warranties or due to a third party claim that if true would constitute a breach of any such warranty or (ii) Supplier's negligence or willful misconduct, except to the extent of Buyer's gross negligence or willful misconduct. For the purposes of Section 5.1(b) above, a Deliverable shall include any repaired or replaced version of a Deliverable that previously failed to comply with such warranty but shall not otherwise extend to any Wear or Replacement Parts (as defined below).

- 7.1. For twelve (12) months after Buyer's acceptance of the last Deliverable set forth on a Statement of Work, upon receipt of a problem report by Buyer, Supplier shall provide trained personnel at Buyer's site within 24 hours from notification of the problem by the Buyer for the purpose of reviewing and initiating the necessary remedial actions; provided, however, that if such receipt of a problem report is provided by Buyer on a Saturday, Sunday or U.S. bank holiday (in each case, as determined based on the time in Irvine, California), such notice shall be deemed to have been given at 09:00 a.m. (Irvine, California time) on the first day thereafter that is not a Saturday, Sunday or U.S. bank holiday. The Supplier shall maintain the personnel and material requirements in order to comply with the foregoing.
- 7.2. Prior to the last Deliverable provided to Buyer under the Statement of Work, Supplier agrees to provide the Buyer with lists in EXCEL format of all wear or replacement parts including, without limitation, information on current prices (such listed parts, the "Wear and Replacement Parts"). The lists shall specifically identify those replacements and wear parts that should be immediately available for operation of the Deliverables.
- 7.3. EXCEPT AS SET FORTH IN THIS SECTION 5, SUPPLIER DISCLAIMS ALL WARRANTIES, IMPLIED OR EXPRESSED, INCLUDING WITHOUT LIMITATION ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
8. **INDEMNIFICATION:** Seller shall indemnify and hold Purchaser and its affiliates harmless and, upon request, shall defend each of them from and against any or all claims, demands, litigation or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors or suppliers. Seller shall, upon request, pay or reimburse Purchaser or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys' fees, as incurred by

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Purchaser or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage. PURCHASER'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS ORDER IS LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE GOODS AND/OR SERVICES. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, PURCHASER SHALL NOT BE LIABLE UNDER THIS ORDER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **PURCHASER'S PROPERTY:** Tangible or intangible property of any nature furnished to Seller by Purchaser or specifically paid for in whole or in part by Purchaser, and any replacements or attachments, are the property of Purchaser and, unless otherwise agreed in writing by Purchaser, will be used only by Seller solely to render services or provide goods to Purchaser. Seller will not substitute any property or take any action inconsistent with Purchaser's ownership of such property. While in Seller's custody or control such property will be held at Seller's risk, will be kept insured by Seller at its expense for its replacement cost with loss payable to Purchaser and will be subject to removal at Purchaser's written request, in which event Seller will prepare such property for shipment and redelivery to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.
10. **CHANGES:** At all times Purchaser will have the right to make changes to this Order, including changes to drawings, designs, configurations, specifications, quantities, methods of shipment or packing and delivery schedules or locations of delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of any work under this Order, an equitable adjustment will be made in the contract price or delivery schedule, or both, and this Order will be modified in writing accordingly. Nothing in this Section, including any disagreement with Purchaser as to any claimed adjustment, will excuse Seller from proceeding with this Order as changed. Any claim by the Seller for adjustment under this Section 10 must be in a detailed writing and delivered to Purchaser within five (5) days after the date Seller receives notification of change. Any change will be authorized only by a duly executed amendment to this Order. Information, such as technical information or guidance provided to Seller by representatives of Purchaser, will not be construed as a change within the meaning of this Section. If Seller considers that the conduct of any of Purchaser's employees has constituted a change under this Order, Seller will immediately notify Purchaser's Purchasing Department in writing as to the nature of the change and any proposed adjustment, which will then be subject to this Section 10.
11. **COMPLIANCE WITH LAWS:** Seller represents and warrants that it is in compliance with and all goods and/or services supplied hereunder have been produced or provided in compliance with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules and regulations. Seller will also comply with any provisions, representations or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Order. Without limiting the foregoing: (a) Seller will comply with the Equal Opportunity Clause set forth in 41 CFR Chapter 60 1.4, the Affirmative Action Clause regarding Disabled Veterans and Veterans of the Vietnam Era, 41 CFR Chapter 60 250.4, the Affirmative Action Clause regarding Handicapped Workers 41 CFR Chapter 60 741.4 and any other provisions or contractual clauses required by the OFCCP, 41 CFR Chapter 60, as well as any Executive Orders as now or later issued, amended or codified. (b) Seller confirms that it is in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 60 18. (c) Seller represents that the goods to be furnished were or will be produced in compliance with the requirements of the Fair Labor

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Standards Act of 1938, as amended, including Section 9. (d) Seller shall furnish Purchaser, no later than the date the goods are delivered, with a Material Safety Data Sheet for any goods which are covered by the Occupational Safety and Health Act Hazard Communications Standard as contained in 29 C.F.R. § 1910.1200. Seller shall indemnify Purchaser from any damages, liabilities, claims, losses, penalties and expenses (including attorneys' fees) paid or incurred by Purchaser as a result of any breach by Seller of these warranties. Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any good and/or service.

12. **CONFIDENTIAL OR PROPRIETARY INFORMATION:** The terms of the Mutual Nondisclosure Agreement entered into between Supplier and Enevate Corporation shall apply to any information disclosed by the parties pursuant to this Agreement and the Confidentiality Agreement is hereby incorporated by reference into the terms of this Agreement. Notwithstanding anything to the contrary, anything assigned to Buyer pursuant to Section 6 shall be deemed Proprietary Information (as such term is used in the Confidentiality Agreement) of Buyer.
13. **INSURANCE REQUIREMENTS:** Requirements Seller agrees to carry insurance covering product liability and general liability in amounts of not less than \$2,000,000.00 per occurrence. All such policies shall provide for at least thirty (30) days prior written notice, to Buyer, of cancellation, non-renewal or material change in the terms and conditions of coverage and name Buyer as an additional named insured. At Buyer's request, Seller will provide Buyer with a certificate or certificates of insurance evidencing such coverage. In the event Seller ceases to carry adequate insurance that names Buyer as an additional insured, Buyer may immediately cancel any Purchase Order by giving Seller written notice of Buyer's election to cancel. Seller agrees to maintain workers compensation insurance in accordance with the laws of the State of California. Such policy shall be endorsed so that the insurer will have no right of subrogation against Buyer.
14. **TERMINATION:** Purchaser may terminate all or any part of this Order for convenience at any time by written notice to Seller. Upon such termination, Purchaser's liability will be limited to reasonable termination charges mutually agreed by Seller and Purchaser, provided that Seller must specify any proposed charges in writing within fifteen (15) days after termination. This Order shall terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the laws relating to bankruptcy or the relief of debtors.
15. **INTELLECTUAL PROPERTY:** On being notified, Seller will promptly investigate and defend, as its expense, any suit or proceeding in which Purchaser or any other Indemnitee are made defendants or claimed potential defendants for any alleged infringement, contributory infringement, inducement of infringement, or unauthorized or unlawful use of any patent, copyright, trademark, trade secret, mask work, proprietary data, or other information, or claim of right, title or interest by another party in any good or service (or related documentation), in any case resulting from the sale, use, lease or other disposition of any good or service under this Order ("Infringement"). Seller will pay and discharge all judgments or decrees rendered in any such suit or proceeding against any Indemnitee. Seller may settle any such suit or proceeding on terms and conditions of Seller's selection, provided they are not in conflict with the terms of this Order and Seller pays all settlement amounts. If Seller fails to promptly investigate, defend or settle, then Purchaser will, following notification to Seller, have the right from that time on to have sole control of the defense of such suit or proceeding and all negotiations for its settlement or compromise, and Seller will pay, as they become due, all costs, expenses, and reasonable attorneys' and experts' fees incurred by Purchaser in undertaking such actions and any judgements or decrees which may be rendered

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against or any settlements or compromises that may be entered into by Purchaser or any other Indemnitee relating to a claim indemnified against under this Order. Seller indemnifies and agrees to hold harmless Purchaser and all of the indemnified parties from all costs, expenses, liabilities, damages and attorneys' and experts' fees arising from any alleged or actual Infringement and will pay all judgments and other amounts payable or any settlement or compromise arising from all suits or proceedings involving Infringement. In addition, Seller will, at its own expense and at Purchaser's option, either procure for Purchaser the right to continue using the allegedly infringing item, replace it with a noninfringing equivalent or remove it and refund the purchase price and the transportation and installation costs thereof.

16. **MISCELLANEOUS:** (a) **NON ASSIGNMENT:** Assignment of this Order or any interest in it or any payment due or to become due under it, without the written consent of the Purchaser, will be void. An assignment will be deemed to include not only a transfer of this Order or such interest or payment to another party but also a change in control of Seller, whether by transfer of stock or assets, merger, consolidation, or otherwise. (b) **TRANSPORTATION:** All the prices are established as F.O.B. Seller and/or Origin Dock, Freight Prepaid, unless otherwise specifically provided on the front of this Order. Title and risk of loss shall not pass to Purchaser until delivery of the goods to the location designated on the face of this Order and acceptance by Purchaser. If Purchaser rightfully rejects the goods, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller. The responsibility for freight damaged merchandise will be assumed by Seller. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Seller. Seller will not declare any value on such materials shipped via United Parcel Service, Rail Express, Air Express, Air Freight or Parcel Post. Seller will release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. (c) **ANTICIPATION OF DELIVERY SCHEDULE:** Unless otherwise agreed in writing, Seller will not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Purchaser's delivery schedule. Goods shipped to Purchaser in advance of schedule may be returned to Seller at Seller's expense. (c) **SELLER'S INVENTORY:** Purchaser will have no obligation to request quotations or place Orders with Seller, both of which will be in Purchaser's sole discretion. Purchaser acting in its sole discretion will determine the actual quantity of goods or services to be purchased. The quantity of goods or services, if any, specified in forecasts supplied by Purchaser from time to time, or otherwise, is an estimate only. Seller bears sole responsibility for managing Seller's raw material, work in process, and inventory, and Purchaser will have no liability with respect thereto (whether upon termination of this Order or otherwise) other than in connection with termination as provided in Section 14. (d) **FORCE MAJEURE:** A party shall not be liable for nonperformance or delay in performance caused by an event reasonably beyond the control of such party, including, but not limited to wars, revolutions, riots, national emergency, epidemics, fire, flood, earthquake, force of nature, any other act of God, or applicable laws or governmental regulations. In the event that such force majeure should obstruct performance of this Agreement for more than three (3) weeks, the parties hereto shall consult with each other to determine whether this Agreement or an applicable Statement of Work should be modified. The party facing an event of force majeure shall use its best efforts to remedy that situation as well as to minimize its effects. (e) **REMEDIES:** Each of the rights and remedies reserved to Purchaser in this Order shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Purchaser in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Purchaser shall be deemed

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to be a waiver of any such right or remedy. (f) PUBLICITY Neither party shall issue a press release or other public statement regarding the relationship of the parties or this Agreement without the prior written consent of the other party. (g) DOCUMENTATION: It is agreed that all technical documentation and other literature necessary for the proper use of the goods or services will be provided to Purchaser with the goods or services, unless otherwise directed by Purchaser, and its cost included in the price. (h) GOVERNING LAW This Agreement and any dispute arising hereunder shall be governed by the laws of the State of California, without regard to the conflicts of law provisions thereof and without regard to the UN Convention on the International Sale or Goods. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover reasonable costs and attorneys' fees. (i) ENTIRE AGREEMENT: This Order, with such documents as are expressly incorporated by reference, is intended by the parties as a final expression of their agreement with respect to such terms as are included in it, and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection