

Ballard Technology, Inc.

Purchase Order Terms and Conditions

1. GENERAL PROVISIONS

- a. 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 Ballard Technology, Inc. (BALLARD) and the supplier (SUPPLIER) identified in the Purchase Order. Unless specifically agreed to in writing by a BALLARD authorized representative, BALLARD objects to, and is not bound by, any term or condition that differs from these terms and conditions. SUPPLIER's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes SUPPLIER's acceptance of these terms and conditions.
- b. The term "ARTICLE(S)" refers to the goods, products, supplies, assemblies, materials, technical data, drawings, services, or other terms constituting the subject matter of this Purchase Order, which are provided by SUPPLIER to BALLARD hereunder.
- c. This agreement shall be governed by the laws of the State of Washington without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.
- d. All disputes under this Purchase Order that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SUPPLIER shall diligently proceed with the performance of this Purchase Order as directed by BALLARD.
- e. The failure to exercise any right under this Purchase Order shall not be deemed to be a waiver of such right, and shall not affect the right to enforce each and every right hereof. The waiver of any breach of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of any: (i) subsequent breach of such term, provision, covenant or condition; or (ii) other term, provision, covenant, or condition.
- f. SUPPLIER may not assign any of its rights, duties, or obligations hereunder without the prior written consent of BALLARD, which BALLARD will not unreasonably withhold. BALLARD may, at its option, void any attempted assignment or delegation undertaken without BALLARD's prior written consent.
- g. If BALLARD consents to the use of a Subcontractor, SUPPLIER will:
 - i. Guarantee and will remain liable for the performance of all subcontracted obligations.
 - ii. Indemnify BALLARD for all damages and costs of any kind, subject to the limitations in Section 12 (Limitations of Liability) incurred by BALLARD or any third party and caused by the acts and omissions of SUPPLIER's Subcontractors.
 - iii. Make all payments to its Subcontractors. If SUPPLIER fails to timely pay a Subcontractor for work performed, BALLARD 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 BALLARD harmless for all damages and costs of any kind, without limitation, incurred by BALLARD and caused by SUPPLIER's failure to pay a Subcontractor.
 - iv. Flow down all applicable requirements of this Purchase Order, including key characteristics, to its Subcontractors.

2. QUALITY

- a. SUPPLIER is responsible for the quality of the ARTICLES delivered, as well as for strict compliance with the specifications set forth in the Purchase Order or in any separate documents that may govern the provision of the ARTICLES. SUPPLIER shall flow down to its supply chain all applicable requirements described in this section.
- b. SUPPLIER shall provide and maintain a quality control system and a counterfeit parts prevention system necessary for compliance with the specifications and requirements set forth in the Purchase Order, in these terms and conditions, and in any separate documents that may govern the provision of the ARTICLES including any other specific quality requirements. SUPPLIER shall promptly notify BALLARD of the loss of its certification or other significant changes in the status or effectiveness of its quality control system or counterfeit parts prevention system.
- c. SUPPLIER shall obtain BALLARD's approval before making any changes to ARTICLES, materials, or processes that could affect form, fit, function, quality, or previous First Article Inspection results. Unless otherwise indicated by BALLARD in writing in the Purchase Order or on other drawings or specifications in connection with the ARTICLES ordered, all statutory, official and/or customary standards apply to the ARTICLES.
- d. SUPPLIER shall not deliver to BALLARD without specific written authorization from Ballard (i) any non-conforming ARTICLES, (ii) ARTICLES containing counterfeit parts, or (iii) any ARTICLES for which the SUPPLIER cannot provide credible evidence of traceability to the original manufacturer or a qualified aftermarket manufacturer. SUPPLIER shall provide BALLARD with timely reporting, disposition requirements, and specific identity when a previously delivered ARTICLE is found by the SUPPLIER to be non-conforming or containing counterfeit parts.
- e. SUPPLIER shall keep and maintain inspection, test and related records, for a minimum of ten (10) years. These records shall be available to BALLARD or BALLARD's representative. SUPPLIER shall allow copies to be made and shall furnish all information required by BALLARD or BALLARD's representative upon request. When records are discarded, they shall be permanently destroyed.

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- f. SUPPLIER shall grant right of access to BALLARD, its customers, and regulatory authorities to all of SUPPLIER's facilities and quality records, processes, and procedures associated with this Purchase Order.
- g. SUPPLIER shall not deliver to BALLARD without specific written authorization from Ballard any ARTICLES containing what is commonly referred to as "open source software".

3. INSPECTION AND ACCEPTANCE

- a. Final inspection and acceptance of ARTICLES shall be made by BALLARD after delivery or as otherwise indicated in the Purchase Order and shall be conclusive except with regard to latent defects, fraud, such gross mistakes as amount to fraud, and the SUPPLIER's warranty obligations.
- b. BALLARD may reject any or all of the ARTICLES which do not conform to the applicable requirements. At BALLARD's option, BALLARD may (i) return the non-conforming ARTICLES to SUPPLIER for a refund or credit; (ii) require SUPPLIER to replace the non-conforming ARTICLES; or (iii) repair the non-conforming ARTICLES so that it/they meet the requirements. As an alternative to (i) through (iii), BALLARD may accept the non-conforming ARTICLES conditioned on SUPPLIER providing a refund or credit in an amount BALLARD reasonably determines to represent the diminished value of the non-conforming ARTICLES. BALLARD's payment to SUPPLIER for ARTICLES prior to BALLARD'S timely rejection of such ARTICLES as non-conforming will not be deemed as acceptable by BALLARD.

4. WARRANTY

- a. SUPPLIER warrants that its ARTICLES are not counterfeit and are merchantable, of best quality, free from defects in materials and workmanship, as ordered and described and in strict conformance with all descriptions, drawings and specifications submitted by BALLARD. The SUPPLIER further warrants that it has clear title to all ARTICLES and that they are being delivered free and clear of any encumbrance. All warranties shall be deemed conditions as well as warranties.
- b. APPROVED SOURCES: In particular, and without limiting the generality of the foregoing warranty, SUPPLIER warrants that all materials and components purchased by, supplied to, or used in the manufacture or assembly of all ARTICLES delivered to BALLARD by SUPPLIER have been acquired directly from an approved OEM manufacturer or from an OEM manufacturer's "authorized" or "franchised" distributors. SUPPLIER acknowledges that the use of materials or components acquired from "Independent" distributors or "brokers" is prohibited unless written permission is obtained from BALLARD in advance. For the purposes intended by this provision, "authorized" or "franchised" distributors are defined as those distributors holding a formal distribution agreement with the designated OEM manufacturer, which agreement provides for full OEM warranty coverage, provision of OEM technical and engineering support, access to OEM technical or test data, original OEM certificates of conformance, and full traceability and chain of custody documentation. Materials or components obtained from any other source(s) shall be deemed to be "counterfeit".

5. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- a. SUPPLIER shall not make any unauthorized use of any third party intellectual property or incorporate or otherwise use any unauthorized third party intellectual property in the ARTICLES provided to BALLARD. SUPPLIER represents and warrants that neither the ARTICLES nor the sale thereof covered by this Purchase Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. SUPPLIER agrees to indemnify and save BALLARD harmless from and against any and all claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any such alleged infringement or violation.
- b. All specifications, data and other information furnished by BALLARD or its agents is confidential and shall be treated by SUPPLIER as confidential and proprietary and not disclosed to any other person or used for any purpose other than performing this contract, unless SUPPLIER obtains written permission from BALLARD to do so. Any such information shall be returned to BALLARD after completion of performance by SUPPLIER hereunder or when requested by BALLARD. All such information or other intellectual property of BALLARD shall remain the exclusive property of BALLARD and no license thereto to SUPPLIER shall be implied hereunder (except as necessary to perform its obligations hereunder, and then solely for the benefit of BALLARD).
- c. SUPPLIER shall not publish any information developed under this Purchase Order, nor disclose, confirm, or deny any details about the existence or subject matter of this Purchase Order, or use BALLARD's name in connection with SUPPLIER's sales promotion or publicity without prior written approval of BALLARD.

6. INSURANCE

SUPPLIER shall indemnify and defend BALLARD from any and all claims or liabilities in connection with the ARTICLES or arising out of such work. SUPPLIER shall maintain all necessary insurance coverages, including public liability and Worker's Compensation Insurance. Furthermore, SUPPLIER shall maintain general liability and product liability insurance in accordance with standard industry practice.

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7. INDEPENDENT CONTRACTOR RELATIONSHIP

SUPPLIER acknowledges and agrees that it is acting under this Purchase Order solely as an independent contractor, and not as an employee of BALLARD, and shall have no authority to act for or bind or obligate BALLARD in any manner except to the extent specifically authorized in writing by BALLARD. SUPPLIER acknowledges that it is solely responsible for determining the manner and means of performance hereunder. Accordingly, nothing herein contained shall be construed as creating the relationship of employer and employee between BALLARD and SUPPLIER. No Agency relationship is created between BALLARD and SUPPLIER by this Purchase Order and SUPPLIER is not an agent of BALLARD. SUPPLIER will not hold itself out as an agent of BALLARD, and shall not execute any documents on behalf of BALLARD. SUPPLIER shall not utilize BALLARD's letterhead, business card, or BALLARD's trademarks.

8. SHIPPING AND DELIVERY; TITLE

- a. SUPPLIER shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Purchase Order. SUPPLIER shall notify BALLARD in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a revised schedule and shall not constitute a waiver to BALLARD's rights and remedies hereunder.
- b. SUPPLIER will preserve, pack, package and handle the ARTICLES so as to protect the ARTICLES from loss or damage and in accordance with best commercial practices in the absence of any specifications BALLARD may provide. The SUPPLIER shall bear liability for any damage caused by inadequate packaging of the ARTICLES. Without limiting the foregoing, SUPPLIER shall observe the requirements of any local laws and regulations relating to hazardous ARTICLES, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal. SUPPLIER will include with each delivery of ARTICLES a packing list identifying the Purchase Order number, the BALLARD part number for each of the ARTICLES (if applicable), a description and the quantity of each of the ARTICLES, and the date of shipment. Unless BALLARD expressly instructs otherwise, SUPPLIER will deliver all ARTICLES to BALLARD's plant at the address set forth in the Purchase Order. Unless otherwise indicated by BALLARD in writing in the Purchase Order, SUPPLIER assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.
- c. Title to ARTICLES and risk of loss or damage to ARTICLES, except for any loss or damage covered by warranty hereunder, shall pass to BALLARD only upon delivery of goods to BALLARD's site (or such other F.O.B. point specified by BALLARD in this Purchase Order); provided, however, that if installation services are specified herein, title and risk of loss shall not pass to BALLARD until such installation services have been performed by SUPPLIER and accepted by BALLARD.

9. PRICE, INVOICES & SET-OFFS

- a. SUPPLIER warrants that the prices for the ARTICLES sold to BALLARD hereunder are not less favorable than those currently extended to any other customer for the same or similar ARTICLES in similar quantities. If SUPPLIER reduces its price for such ARTICLES during the term of this Purchase Order, SUPPLIER agrees to reduce the price hereof correspondingly. SUPPLIER warrants that prices shown on this Purchase Order are complete, and no additional charges of any type shall be added without BALLARD's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.
- b. Unless otherwise specified in the Purchase Order, BALLARD will pay undisputed SUPPLIER invoices by the calculated due date commencing 30 days after both (i) receipt of SUPPLIER's invoice and (ii) the actual or scheduled receipt, whichever is later, of ARTICLES at their destination or upon satisfactory completion of services. BALLARD may withhold for shortages and/or non-conforming ARTICLES. Ballard may take prompt pay discounts, if any, on remittances paid within the number of allowed days after Ballard's receipt of both the ARTICLES and SUPPLIER's invoice.
- c. In the event SUPPLIER is liable to BALLARD for any amounts, BALLARD may, at its election, set-off against any amounts payable to SUPPLIER under this Purchase Order.

10. INSOLVENCY

If at any time BALLARD determines that SUPPLIER's financial condition does not justify continued performance on the terms agreed upon, BALLARD shall be entitled to terminate this agreement without liability therefor. In the event of the insolvency of the SUPPLIER or in the event any proceeding is brought by or against the SUPPLIER, voluntarily or involuntarily, under bankruptcy or insolvency laws, BALLARD shall be entitled to suspend or terminate this agreement without liability therefor.

11. TAXES AND DUTIES

- a. No federal, state, or local taxes on the ARTICLES furnished under this Purchase Order or on the sale, purchase, transportation, use, or possession thereof shall be included on any invoice rendered to BALLARD unless specifically itemized. If BALLARD furnishes the SUPPLIER

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an exemption certificate or other similar proof of exemption with respect to any federal, state or local tax, the invoice price shall be adjusted to eliminate such tax.

- b. SUPPLIER acknowledges and agrees that BALLARD shall be the entity eligible to claim any Internal Revenue Code Section 199 Domestic Production Activities Deduction that may be available with respect to this Purchase Order.
- c. SUPPLIER acknowledges and agrees that BALLARD shall be the entity eligible to claim any tax credits that may be available with respect to the work being done by SUPPLIER under this Purchase Order with respect to the Washington State Business and Occupation (B&O) tax, including, without limitation, as provided for under RCW 82.04.4452 and WAC 458-20-24003.

12. LIMITATIONS OF LIABILITY

BALLARD's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the ARTICLES scheduled for delivery per the Purchase Order issued. FURTHER, IN NO EVENT SHALL BALLARD BE LIABLE FOR PUNITIVE, DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ITS ACTS OR OMISSIONS HEREUNDER. Any action against BALLARD relating to the ARTICLES delivered hereunder must be commenced within one year after the cause of action has accrued.

13. EXCUSABLE DELAYS/FORCE MAJEURE

The following events, and only the following events, shall constitute force majeure under this Purchase Order: (i) acts of God or of a public enemy; (ii) acts of Government; (iii) fires; (iv) floods; (v) epidemics; (vi) quarantine restrictions; (vii) strikes; (viii) freight embargoes; and, (ix) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of SUPPLIER. Each party shall give the other immediate notice of any event that such party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this section shall include the party's good faith estimate of the likely duration of the Force Majeure condition.

14. CHANGES

- a. By written order, BALLARD may from time to time make reasonable changes to: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of BALLARD-furnished property; (vi) time of performance; and (vii) place of performance.
- b. If any such changes cause an increase or decrease in the price or in the time required for its performance, SUPPLIER shall promptly notify BALLARD thereof and assert its claim for equitable adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse SUPPLIER from proceeding immediately with the directed change(s). Changes shall not be binding upon BALLARD except when specifically confirmed in a written Purchase Order or Change Order.

15. TERMINATION

- a. FOR CONVENIENCE: BALLARD may terminate all or any part of this Purchase Order at any time for its sole convenience. Upon such termination, SUPPLIER shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to stop such work. SUPPLIER shall not be paid any termination charge, except with respect to services and custom-made goods, for which SUPPLIER shall be paid a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination.
- b. FOR DEFAULT: (i) BALLARD may by written Notice of Default to SUPPLIER, terminate this Purchase Order in whole or in part, or, at BALLARD's sole discretion, require SUPPLIER to post such financial assurance as BALLARD deems reasonably necessary, if SUPPLIER fails to: (1) deliver ARTICLES within the time specified in this Purchase Order or any extension; (2) make progress, so as to endanger performance of this Purchase Order, or (3) perform any of the other provisions of this Purchase Order. (ii) BALLARD may require SUPPLIER to transfer title and deliver to BALLARD, in the manner and to the extent directed by BALLARD, any partially completed ARTICLES and raw materials as SUPPLIER has produced or acquired for the performance of this Purchase Order, including the assignment to BALLARD of SUPPLIER's subcontracts. SUPPLIER further agrees to protect and preserve property in the possession of SUPPLIER in which BALLARD has an interest. Payment for completed ARTICLES delivered to and accepted by BALLARD shall be at the Purchase Order price. Payment for unfinished ARTICLES, which have been delivered to and accepted by BALLARD and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that SUPPLIER shall not be entitled to profit. BALLARD may withhold from SUPPLIER moneys otherwise due SUPPLIER for completed ARTICLES in such amounts as BALLARD determines necessary to protect BALLARD against loss due to outstanding liens or claims against such ARTICLES.

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16. COMPLIANCE WITH LAWS

- a. SUPPLIER warrants that all ARTICLES provided hereunder are in compliance with applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including without limitation, the Fair Labor Standards Act, and those pertaining to the manufacture, labeling, invoicing and sale of such goods or services, environmental protection, immigration, employment and occupational safety and health. SUPPLIERS located within the United States also warrant that they shall at all times comply with applicable provisions relating to government contractors and subcontractors, which provisions, and any contract clauses required thereunder, are incorporated in this Purchase Order by reference as if set forth in full. BALLARD will make a list of applicable regulations available on request. SUPPLIER agrees to comply with such regulations and to provide BALLARD with compliance certification.
- b. EXPORT LAWS AND REGULATIONS
 - i. In performing its obligations under this Purchase Order, SUPPLIER will comply with United States export control and asset control laws, regulations, and orders, as they may be amended from time to time, including without limitation the Export Administration Regulations (“EAR”), International Traffic in Arms Regulations (“ITAR”), and regulations and orders administered by the Treasury Department’s Office of Foreign Assets Control (collectively, “Export Control Laws”).
 - ii. SUPPLIER shall, upon written request of BALLARD, provide the Export Control Classification Numbers (“ECCNs”) for each ARTICLE being delivered to BALLARD as well as the ECCNs for any components or parts of each ARTICLE, if such component ECCN's are different from the ECCN of the ARTICLE at issue.
 - iii. Without written authorization from BALLARD to the contrary, SUPPLIER represents that (1) any ARTICLES, and the parts and components thereof, it is providing in conjunction with this Purchase Order are not currently “defense articles” as that term is defined in 22 C.F.R. § 120.6 of the ITAR and (2) the services that SUPPLIER is providing in conjunction with this Purchase Order are not currently “defense services” as that term is defined in 22 C.F.R. § 120.9 of the ITAR. SUPPLIER acknowledges that this representation means that an official capable of binding SUPPLIER knows or has otherwise determined that such items, and the parts and components thereof, are not currently on the United States Munitions List at 22 C.F.R. § 121.1. Each party agrees to reasonably cooperate with the other in providing, upon written request of the other party, documentation or other information that supports or confirms this representation, including, for example, Commodity Jurisdiction Determinations.
 - iv. To the extent that such ARTICLES, or any parts or components thereof, were specifically designed or modified for a military end use or end user, SUPPLIER shall notify BALLARD of this fact and shall also provide BALLARD with written confirmation from the United States Department of State that such ARTICLES, and all such parts or components thereof, are dual-use items subject to the jurisdiction of the Department of Commerce.
- c. CONFLICT MINERALS
 - i. SUPPLIER is expected to ensure that any ARTICLE delivered to BALLARD under this order are Democratic Republic of the Congo (DRC) conflict free (do not contain metals derived from “conflict minerals”, as such term is defined below) such that they neither directly nor indirectly finance or benefit armed groups through mining or mineral trading in the DRC or an adjoining country (Angola, Burundi, Central African Republic, The Republic of the Congo, Kenya, Rwanda, South Sudan, Tanzania, Uganda, Zambia). SUPPLIER is to establish policies, due diligence frameworks and management systems, consistent with the Organization of Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (copy available through OECD.org web site - search for “conflict minerals”), that are designed to accomplish this goal.
 - ii. Upon request, SUPPLIER shall complete the Electronic Industry Citizenship Coalition’s current “EICC GeSI Conflicts Minerals Reporting” template with updates annually or sooner if/when there are changes with regard to goods being supplied to BALLARD. This template can be found at www.conflictreesourcing.org. If the source of any conflict minerals is uncertain or unknown, SUPPLIER shall provide a description reasonably acceptable to BALLARD of measures taken to assure the appropriate sourcing and chain of custody of such materials.
 - iii. As used above, the term “conflict minerals” shall have the meaning ascribed to it under The Dodd-Frank Act and shall include, without limitation, gold, tin, tantalum and tungsten, or any other mineral or its derivatives determined by the US Secretary of State to be financing conflict in the DRC.
- d. RoHS COMPLIANCE

Unless the BALLARD Purchase Order calls out an ARTICLE for which the specifications, drawings and other written representations unambiguously declare the ARTICLE not to be RoHS compliant, SUPPLIER represents that any ARTICLE delivered to BALLARD under this order is in compliance with the European Union (EU) Directive 2011/65/EU on the Restriction of the Use of Certain Hazardous Substances

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in Electrical and Electronic Equipment (RoHS Recast). When requested by BALLARD, SUPPLIER will promptly provide BALLARD with written certification that the ARTICLE(S) is in compliance with the RoHS Directive.

e. REACH COMPLIANCE

- i. "REACH" is European Union Regulation (EC) No 1907/2006 concerning the "Regulation on Registration, Evaluation, Authorization and Restriction of Chemicals" which went into force on June 1, 2007. Under REACH, BALLARD's customers within the European Union may require that BALLARD identify any Substances of Very High Concern (SVHC) from the Candidate List as defined under REACH, and BALLARD will need to have SUPPLIER identify any such SVHCs in its ARTICLES. Upon request, SUPPLIER agrees (1) to provide to BALLARD, at no increase in contract price, information regarding any SVHC's present in SUPPLIER's ARTICLES, including the SVHC's name, amount contained, by weight, total part weight and safe usage information, based on the Candidate List in place at the time of receipt of request, (2) to submit response within 45 days upon receipt of request, and (3) to permit BALLARD to disclose such information to its customers or regulatory authorities for the purpose of compliance with the REACH regulation. If at any time, the ARTICLE's chemical composition change after a response is provided, SUPPLIER is required to provide BALLARD with the revised information. BALLARD reserves the right to request REACH information up to thirty-six months after last shipment of an ARTICLE by SUPPLIER to BALLARD.
- ii. Information on REACH and the current Candidate List chemicals can be found on the European Chemicals Agency website available at: <http://echa.europa.eu>. During performance of this order SUPPLIER shall monitor the Candidate List on a regular basis and provide to BALLARD information on new SVHCs contained in SUPPLIER's ARTICLES being delivered under this order as they are added. BALLARD reserves the right to re-survey SUPPLIER if new chemicals are added to the Candidate List before ARTICLE shipment to the European Economic Area.