



## **TERMS AND CONDITIONS OF PURCHASE**

### **1. Sole Terms; Acceptance.**

- 1.1. All purchases of goods and services shall be effected exclusively on the basis of these Terms and Conditions of Purchase unless otherwise expressly stated in a written document executed by both Buyer and Seller. In the event there is any discrepancy, ambiguity, and/or contradiction between any provision of these Terms and Conditions of Purchase and any provision contained in any Seller document concerning the associated Purchase Order, the Purchaser Order and these Terms and Conditions of Purchase shall take precedence, govern, and bind both Buyer and Seller.
- 1.2. If the Purchase Order is construed as an offer to purchase from Buyer, Seller's acceptance is strictly limited to the terms of this offer and Buyer hereby notifies Seller of its objection to any different or additional terms in Seller's acceptance. If this Purchase Order is construed as Buyer's acceptance of Seller's offer, this acceptance is expressly conditional on Seller's written assent to any terms additional to or different from Seller's offer contained herein.

### **2. Buyer.**

- 2.1. Buyer is the purchasing entity stated in the Purchase Order. Seller's sole recourse under the Purchase Order shall be against such entity, and no other affiliated entities.

### **3. Taxes.**

- 3.1 Seller is liable for and shall pay all taxes, impositions, charges and exactions except for applicable sales, VAT/GST or similar taxes that are separately stated on Seller's invoice.
- 3.2 Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
- 3.3 If any tax included in the order was not required to be paid by Buyer, Seller shall promptly notify Buyer and make a prompt refund to Buyer.

### **4. Seller's Representations.**

- 4.1 Seller represents that it is financially solvent, has marketable title to the goods and the right to convey them, and that the goods sold are unencumbered and free from security interests and

liens. These representations shall be continuing in nature and shall remain in full force until final delivery and acceptance of the goods. Seller shall promptly notify Buyer in writing of any event or circumstance that may render any of the foregoing representations inaccurate or untrue.

## **5. Warranties.**

- 5.1 In addition to any warranties in the Purchase Order and any rights and remedies at law or in equity that Buyer may have, Seller expressly warrants that the goods shall be free from defects in material, workmanship, and design, be fit for the purposes intended by Buyer, and conform in every respect with the requirements and specifications set forth by Buyer or in Seller's catalogs, product brochures, or other representations, depictions, samples, or models of the goods, whichever is strictest.
- 5.2 Unless Seller expressly states in writing to Buyer that another warranty period applies, Seller warrants all goods for a period of 24 months from the date of delivery ("Warranty Period"). The goods shall be new and of first-class quality.
- 5.3 All warranties are in addition to any other rights of Buyer and shall survive inspection, delivery, acceptance, and payment.
- 5.4 In addition to any other Buyer remedies, at Buyer's request, Seller shall correct any non-compliance or defect in the goods appearing during or dating from the Warranty Period by a new delivery of replacement goods free of charge, or, upon Buyer's discretion, by repairing the defective goods. Seller shall be liable for the costs of inspection, shipping, replacement and/or repair of the affected goods as well as disassembly of the end-product necessary for the corrective measures. This shall include compensation for the time spent by the Buyer's employees or contractors on the corrective measures. Buyer and its representatives shall have the right to inspect, test, and audit Seller's facilities, processes, materials, and quality systems at any time upon reasonable prior written notice. No inspection, test, or acceptance shall relieve Seller of its warranties or obligations.
- 5.5 If Buyer reasonably determines that goods are defective or non-conforming prior to use or incorporation into Buyer's products and/or service, Buyer may reject or return them at Seller's expense. Rejected goods shall not be replaced except upon Buyer's written authorization.

## **6. Delivery.**

- 6.1 The delivery time and delivery terms for the goods are defined in the Purchase Order. If no delivery time is defined in the purchase order, Seller shall deliver the goods as soon as possible.
- 6.2 The goods shall be packed in a manner suitable for transportation. Seller shall mark the goods and their packages as instructed by the Buyer and as may be required by applicable regulations.

**6.3 TIME IS OF THE ESSENCE IN SELLER'S PERFORMANCE OF THE PURCHASE ORDER.**

6.4 Seller shall notify Buyer within five (5) days of any event beyond its reasonable control preventing or substantially delaying performance under any Purchase Order. During such an event, Buyer may obtain substitute goods from other sources and reduce or cancel quantities from Seller without liability. Prolonged force majeure exceeding thirty (30) days shall entitle Buyer to terminate the Purchase Order without penalty or liability to Seller, upon written notice.

6.5 Shipment shall be to the location directed by Buyer. Invoicing, delivery terms, shipping, packing and waste reduction instructions shall be provided to Seller through an attachment to, or printing on the face of, the Purchase Order, or incorporated into the Purchase Order. In the absence of such instructions, the delivery terms for goods shall be FCA named place of delivery (Incoterms 2010). Seller shall deliver goods to the carrier or other person nominated by Buyer, unless otherwise agreed. The parties shall specify as clearly as possible the location within the named place of delivery, and risk of loss shall pass to Buyer at that location. Title shall pass to Buyer upon receipt of goods at Buyer's facility or third-party drop shipment point.

6.6 Unless otherwise stated in the Purchase Order, Buyer makes no guaranty or commitment of any kind to Seller regarding Buyer's requirements for goods and services.

**7. Payment Terms and Price.**

7.1 In the absence of contrary payment terms in the Purchase Order, and subject to the terms of the Purchase Order, the Buyer shall make all payments for goods within 60 days from the end of the month of delivery, after receipt and acceptance of the goods by Buyer and an invoice therefor. When the parties are not permitted to agree to such payment terms in excess of local legislation, a shorter payment period may be applicable.

7.2 The prices of the goods are detailed in the Purchase Order. The prices include transportation costs and packing and packing materials, as well as all taxes, duties, levies and other possible charges. The prices of the goods are firm, fixed, and not subject to escalation for any reason, including increased labor, material, transportation, or tariff costs. Seller shall not charge surcharges or fees without Buyer's prior written approval.

**8. Customs; Exports.**

8.1 Seller shall comply with all applicable import and export laws. Seller shall assist Buyer in minimizing the costs of international transactions by providing documentation to support claims. Seller is responsible for all costs associated with import and export compliance, including obtaining and paying for licenses and authorizations, certificates of origin and proper documentation for any import, export, or preferential duty claim. Any credits or refunds including tax, export or trade credits belong to Buyer.

## **9. Intellectual Property.**

- 9.1 “Intellectual Property” includes any patent, trademark, trade secret, copyright, design, know-how, or other proprietary right.
- 9.2 Buyer retains all right, title and interest in and to its Intellectual Property related to the goods and services described in the Purchase Order. Any license of Buyer’s Intellectual Property is granted solely for the limited right to permit Seller to perform its obligations under the Purchase Order for the sole benefit of Buyer.
- 9.3 For the avoidance of doubt, Seller retains its Intellectual Property that existed before this Purchase Order. Seller grants Buyer a worldwide, nonexclusive, royalty-free, irrevocable, perpetual license under its Intellectual Property to use, sell, repair and reconstruct goods.
- 9.4 Seller hereby assigns to Buyer all right, title, and interest in and to all Intellectual Property in goods created for Buyer related to the Purchase Order.
- 9.5 Seller warrants that the sale of the goods will not infringe any United States or foreign patent, copyright, trademark, intellectual property rights, or proprietary interests of third parties.

## **10. Indemnification.**

- 10.1 SELLER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS BUYER AND ITS DIRECTORS, OFFICERS, AND EMPLOYEES (“BUYER INDEMNIFIED PARTIES”), AGAINST ALL SUITS AT LAW OR IN EQUITY AND FROM ALL DAMAGES, CLAIMS, AND DEMANDS FOR ACTUAL OR ALLEGED INFRINGEMENT OF ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADEMARK, INTELLECTUAL PROPERTY RIGHTS, OR PROPRIETARY INTERESTS OF THIRD PARTIES BY REASON OF THE USE OR SALE OF THE GOOD. SELLER SHALL, AT ITS EXPENSE, DEFEND ALL SUCH CLAIMS AND SHALL PAY ALL CHARGES OF ATTORNEYS AND CONSULTANTS AND ALL COSTS AND OTHER EXPENSES ARISING THEREFROM. Buyer in its sole discretion may return to Seller for full refund any actually or allegedly infringing good.
- 10.2 TO THE MAXIMUM EXTENT ALLOWED BY LAW, SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE BUYER-INDEMNIFIED PARTIES AGAINST ALL LOSS, DAMAGE, LIABILITY, COST, AND EXPENSE (INCLUDING REASONABLE ATTORNEYS’ FEES, ANY INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PROPERTY) RESULTING FROM OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR NONPERFORMANCE OF THE PURCHASE ORDER BY SELLER OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SELLER OR ANYONE FOR WHOSE ACTS SELLER MAY BE LIABLE (INCLUDING NEGLIGENCE AND CONCURRENT NEGLIGENCE), EXCEPT TO THE EXTENT SUCH LOSS, DAMAGE, LIABILITY, COST, OR EXPENSE IS CAUSED BY THE

BUYER-INDEMNIFIED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BUYER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO CONTROL THE DEFENSE OR SETTLEMENT OF ANY CLAIM OR LAWSUIT COVERED BY SELLER'S INDEMNITY HEREUNDER AND, AT BUYER'S OPTION, SELLER SHALL, AT SELLER'S EXPENSE (A) DEFEND ALL ACTION BASED THEREON, OR (B) PAY BUYER ALL ATTORNEYS' AND CONSULTANTS' FEES AND ALL COSTS AND OTHER EXPENSES ARISING FROM THE DEFENSE AND SETTLEMENT THEREOF BY THE BUYER-INDEMNIFIED PARTIES.

10.3 If any government agency or Buyer reasonably determines that a recall, retrofit, or corrective action relating to the goods is necessary, Seller shall bear all associated costs, including communication, transportation, replacement, labor, and disposal costs, and shall cooperate fully with Buyer in planning and executing such actions.

#### **11. Termination for Convenience.**

11.1 Buyer shall have the right to terminate any Purchase Order, in whole or in part, without the consent or fault of Seller, for the convenience of Buyer at any time upon written notice to Seller. In such event, and subject to the terms of the Purchase Order, Buyer shall be responsible for payment of only those goods currently manufactured pursuant to the Purchase Order or received and accepted by Buyer. In the event Seller has purchased raw materials for the production of goods solely pursuant to a Purchase Order from Buyer, then, if Buyer terminates the Purchase Order pursuant to this Section 11.1, at Seller's option, Seller may retain the raw materials and Buyer shall have no obligation to purchase the same from Seller or Seller shall have the right to have Buyer purchase the specific raw materials from Seller at Seller's cost plus five percent (5%) of the cost of the raw materials at issue.

#### **12. Termination for Default.**

12.1 Buyer shall have the right to terminate any Purchase Order, in whole or part, at any time, if Seller: (a) fails to make any delivery in accordance with the agreed delivery date; (b) fails to observe or comply with any of the other instructions, terms, conditions, or warranties applicable to the Purchase Order; (c) fails to make progress so as to endanger fully and timely performance of the Purchase Order; or (d) is subjected to any proceedings by or against it in bankruptcy or insolvency, for appointment of a receiver or trustee, or for an assignment for the benefit of its creditors. If Seller's financial position deteriorates to such an extent that in Buyer's opinion Seller's capability to adequately fulfill Seller's obligations under any Purchase Order has been placed in jeopardy, Buyer may require from Seller prompt delivery of a financial statement (to contain such reasonable information as Buyer may request) for the purpose of determining Seller's financial responsibility. In the event of a termination for such default, Buyer shall be entitled to any and all damages, losses, costs, and expenses incurred by Buyer arising out of or resulting from such default.

### **13. Remedies.**

- 13.1 The rights and remedies available to Buyer are cumulative and in addition to all other legal or equitable remedies.
- 13.2 Monetary damages may not be a sufficient remedy for any actual, anticipatory or threatened breach of the Purchase Order and, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance and injunctive equitable relief as a remedy.
- 13.3 In addition to any other remedies Buyer may have at law or in equity, Buyer shall have the continuing right, without prior notice to Seller, to set-off, recoup, or withhold against any amounts payable by Buyer or any of its affiliates to Seller any sums due or that may become due from Seller to Buyer or any of its affiliates, whether arising under the Purchase Order, any other agreement, or by operation of law.
- 13.4 Buyer expressly retains all rights and remedies available under the Uniform Commercial Code, including, without limitation, the rights to cover and set-off, and to assert any other statutory or equitable remedies. Any term or condition, whether in Seller's quotation, acknowledgment, invoice, or otherwise, that purports to waive, exclude, limit, or disclaim any of Buyer's statutory rights or remedies (including but not limited to, rights to damages, or the rights to cover and set-off) shall be null, void, and of no effect.
- 13.5 Seller shall not exclude or limit its liability for consequential, indirect, or incidental damages, including costs of removal, reinstallation, loss of profits, or damage to Buyer's reputation caused by defective goods.

### **14. No Publicity.**

- 14.1 Seller shall not make any release regarding the Purchase Order or use of Buyer's trademark or trade name, including any public announcement or advertising, unless it receives written permission from Buyer to do so.

### **15. No Assignment.**

- 15.1 Seller shall not assign or transfer its rights, delegate or sublet its performance in whole or in part under the Purchase Order, or assign or transfer funds due hereunder, without Buyer's prior written consent. Any attempted assignment or delegation without prior written consent shall be void and shall constitute a material breach of the Purchase Order. The Purchase Order shall be binding upon Seller and Buyer and their respective successors and permitted assigns.

### **16. Confidentiality.**

- 16.1 Seller shall not disclose to third parties nor use, for any other purpose than the proper fulfillment of the Purchase Order, any information of confidential nature, such as technical information and data, drawings, price structures, costs, and volume information, received

from the Buyer (“Information”), without the prior written permission of the Buyer, except Information which (a) was in possession of the Seller prior to disclosure hereunder; (b) was or becomes part of the public domain without breach of the confidentiality obligations herein; or (c) that the Seller can show was received from a third party who did not acquire it, directly or indirectly, from the Buyer.

## **17. Documentation.**

17.1 Seller shall deliver the goods with all necessary documentation to enable the correct use and installation of the goods. Buyer shall have the right to use and distribute such documentation for the sales and maintenance of the goods.

17.2 Seller shall, upon request, provide Buyer with information on the country of origin of the goods, the correct tariff classification codes for the goods and whether the goods classify as dual-use goods under the applicable export control laws and regulations.

## **18. Insurance.**

18.1 Seller shall maintain adequate insurance to cover any general liability or product liability the Seller may incur in connection with or as a result of the performance of its obligations under the Purchase Order. Seller shall, upon Buyer’s request, present the corresponding insurance certificates to the Buyer.

## **19. Choice of Law; Dispute Resolution.**

19.1 The parties shall discuss in good faith to resolve any disputes. If such discussions are not successful, any disputes relating to the Purchase Order shall be governed by and interpreted in accordance with the laws of the country or State, as applicable, of Buyer legal entity’s place of business. The United Nations Convention on Contracts for the International Sale of Goods and Article 1195 of the French Civil Code (Code Civil) are expressly excluded.

19.2 THE PARTIES EXPRESSLY WAIVE ANY RIGHTS TO A JURY TRIAL.

## **20. Compliance with Applicable Laws.**

20.1 Seller shall comply with all applicable laws, statutes, rules, regulations, orders, and standards in any jurisdiction. Specifically, Seller warrants that all goods comply with all applicable federal, state, and local safety standards, hazardous-substance regulations, and labeling requirements. Seller shall maintain documentation evidencing such compliance and furnish it upon request.

20.2 Seller shall ensure that all its sub-suppliers comply with these Terms and Conditions, including ethical, environmental, and safety requirements. Seller remains fully responsible for the acts and omissions of its sub-suppliers.

## **21. Anti-Corruption.**

In connection with all business transactions with Buyer:

- 21.1 Seller and its suppliers shall comply fully at all times with applicable national and international anti-bribery rules, including the U.S. Foreign Corrupt Practices Act (FCPA) and European Union, Organization for Economic Co-operation and Development (OECD) and Council of Europe anti-bribery rules.
- 21.2 Seller shall not directly or indirectly solicit, receive or offer any form of bribe, kickback, or other corrupt payment or thing of value to or from any person or organization, including government agencies or officials, companies or personnel of those companies.

## **22. Relationship of Parties.**

- 22.1 Each Party is an independent contractor and the Purchase Order shall not constitute, create or give effect to or otherwise imply a joint venture or partnership of any kind. Neither Party shall be deemed to be an employee, agent, partner, legal representative or joint employer of the other, nor shall have any right, power or authority to create any obligation on behalf of or bind the other in any way.

## **23. Continuity of Supply and Obsolescence.**

- 23.1 Seller shall provide Buyer with at least six (6) months' prior written notice before discontinuing, redesigning, or materially modifying any goods supplied under the Purchase Order. Seller shall continue to supply such goods during that period or ensure a form-, fit-, and function-equivalent replacement acceptable to Buyer. Should Seller fail to provide Buyer with such notice, Seller shall pay to Buyer all damages resulting from such failure, including those damages related to Buyer's cover and damage to Buyer's economic interests, contractual relationships, reputation, or otherwise.

## **24. No Implied Waiver.**

- 24.1 Buyer's failure to insist upon Seller's performance of any obligation or to exercise any right shall not constitute a waiver of future performance or future exercise of a right. Seller's obligations with respect to future performance and rights shall continue.
- 24.2 Buyer and Seller acknowledge and agree that Buyer's waiver of any of Seller's obligations hereunder must be in writing and signed by a duly authorized representative of Buyer.

## **25. Miscellaneous.**

- 25.1 Seller is an independent contractor and not an agent of Buyer.
- 25.2 Should any provision of these Terms and Conditions of Purchase be held invalid or unenforceable, the remaining terms will remain in full force and effect.



25.3 Seller's warranties, indemnities, confidentiality obligations, intellectual property rights, and any other obligations intended by their nature to survive termination shall remain in effect indefinitely.

25.4 Seller shall maintain complete production, inspection, and shipment records for each batch of goods for a minimum of seven (7) years after delivery and provide such records upon Buyer's request.