

# Innotec, Inc. Supplier Terms and Conditions

## December 15, 2008

### 1. The Contract

#### 1.1 Offer and Acceptance

Each Purchase Order Innotec, Inc. ("Buyer") issues is Buyer's offer to purchase the products ("Products") and services ("Services") identified in the Purchase Order. Seller will have accepted a Purchase Order as issued if Seller fails to object to it in writing within 10 business days after receipt, commences any work under the Purchase Order, or engages in any other conduct that recognizes the existence of a contract for the Products. Upon acceptance, the Purchase Order - together with these General Terms and Conditions and any other documents specifically incorporated in the Purchase Order - will become a binding contract between Buyer and Seller. All references to the term "Purchase Order" shall mean and include Innotec, Inc. Supplier Terms and Conditions of Purchase and any other documents specifically incorporated on the Purchase Order. The Purchase Order supersedes all prior agreements, quotations, proposals and other communications regarding the goods and/or services covered by the Purchase Order, except that a mutually signed prior agreement (such as an Award Letter, Statement of Work or Non-Disclosure Agreement) will continue to apply. **THIS PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON SELLER'S ACCEPTANCE OF THE EXCLUSIVE APPLICATION OF THESE TERMS.** Seller hereby waives the right to invoke its standard terms and conditions of sale under the Purchase Order. Unless otherwise specifically stated in the Purchase Order, the Purchase Order is not exclusive and Buyer may purchase similar products and services from third parties

#### 1.2 Supplier Documents and Modifications

Copies of Innotec, Inc. Supplier Terms and Conditions and the Innotec Group Supplier Manual are accessible at [www.innotecgroup.com/supplierresource.html](http://www.innotecgroup.com/supplierresource.html). Buyer may modify these Terms and Conditions and/or the Supplier Manual at any time by posting a revised document on this website. Modifications will be effective on the date modified. Such revised purchase order terms and conditions shall apply to all purchase order revisions/amendments and new Orders issued on or after the effective date. Seller shall be responsible to review Buyer's Website periodically.

#### 1.3 Changes

By notice to Seller, Buyer may make reasonable changes, within the scope of the Purchase Order, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Purchase Order. Seller shall have ten days to notify Buyer, with documentation, in order for parties to agree on equitable adjustments to price and timing. Any changes to the agreements between Buyer and Seller must be in writing and signed by Buyer's authorized representative.

### 2. Delivery/Quantity

#### 2.1 Releases

Quantities and delivery schedules will be as reasonably determined by Buyer and stated in Buyer's firm releases issued to Seller. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as stated in the Purchase Order and related Material Releases. Buyer shall only be bound to Seller for and will have no liability beyond the quantities specified as a firm release. Buyer may return over-shipments to Seller at Seller's expense. Seller is responsible to meet schedule increases up to at least 15% more than the weekly plan or as otherwise required in a signed Statement of Work.

#### 2.2 Packing and Shipment

Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. Seller agrees to comply with all national, state, provincial, and local laws and regulations pertaining to product content and warning labels.

#### 2.3 Delivery Schedules

Unless otherwise stated in the Purchase Order, Products will be delivered F.C.A. Seller's dock (Incoterms 2000). If Products are not ready for delivery in time to meet Buyer's delivery schedules, the party causing the delay will be responsible for additional costs of any resulting expedite or other special transportation. Buyer may be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of

changes to its firm releases or delivery schedules or for other reasons not caused by Seller. Time is of the essence under the Purchase Order.

#### **2.4 Volume/Duration Projections**

From time to time (and in connection with requests for quotation from Seller), Buyer may provide Seller with volume or quantity forecasts or projections for the Products or the anticipated duration of the program for which the Products are being produced. Seller acknowledges that the volume/duration projections, unlike a Release, are neither binding on Buyer nor evidence of a Requirements Contract and are based upon business variables and assumptions which may change over time or may not have been accurate at the time they were made or later. Buyer makes no presentation, warranty or guaranty of any kind or nature as to the accuracy of the volume/duration projections and Seller acknowledges that the actual volumes/duration could be significantly less or more than what was projected.

### **3. Cost and Payment**

#### **3.1 Cost**

Prices for the products set forth on the face of the Purchase Order are not subject to increase, including, without limitation, for any increase based upon changes in raw material or component pricing or labor or overhead costs. Seller represents that the prices charged to Buyer for the Products is as least as low as the price charged by Seller to buyers of a class similar to Buyer and for products similar to those specified in the Purchase Order.

#### **3.2 Supplier Expectations**

Seller, at all times, must provide world class Products competitive as to price, quality, delivery, technology and customer support. Seller's failure to meet the requirements of this subsection is a basis for termination under **Section 13.2** below.

#### **3.3 Payment Terms**

Buyer will pay proper invoices on the payment terms set forth in the Purchase Order. Seller will promptly submit correct and complete invoices or other agreed-upon billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products and performance of Services. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified on the Purchase Order.

#### **3.4 Directed Supplier Payment Terms**

If Buyer's Customer directed or otherwise identified Seller as the source from whom Buyer is to obtain the Goods: (a) Buyer will pay Seller for the products using the same payment terms for the Products that Buyer's Customer uses for the goods in which the specific Products are incorporated, and any lengthening of the Customer's payment terms to Buyer will automatically lengthen the payment terms between Buyer and Seller by an identical amount of time; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price change, provided that no change will be binding on Buyer without Buyer's specific written consent.

#### **3.5 Insolvency of Customer**

In the event that Buyer's Customer files or has filed against it a petition in bankruptcy or insolvency and in the course of such proceeding and in connection with actual or threatened termination by Customer of its Purchase Orders with Buyer, Buyer permits a reduction in the price paid to Buyer for Goods, then the Buyer has the right to proportionally adjust Seller's price for Products incorporated in the Goods upon 60 days notice to Seller. The Purchase Order will otherwise remain in effect without modification. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between Buyer and Seller.

#### **3.6 Setoff**

In addition to any right of setoff or recoupment permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from Seller amounts due at anytime.

### **4. Product Warranties**

#### **4.1 Seller's Warranties**

Seller warrants to Buyer that during the warranty period specified in **Section 4.3**, the Products will be free from defects in workmanship, materials, and design, to the extent designed by Seller, and will conform to the

specifications, drawings, samples, and performance requirements specifically incorporated in the Purchase Order. The Products shall be merchantable and safe and fit for the Buyer's intended purposes. The Products will conform to all applicable laws, orders, regulations and standards. Buyer will receive title to the Products provided free of all liens, encumbrances, and rights of third parties (except those created by Buyer). Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.

#### **4.2 Seller's Quality Warranties**

Seller warrants conformity to the quality control standards and inspection system, as well as related standards and systems (including quality control policies, QS 9000, ISO 9000 and TS16949:2002) that are established or directed by Buyer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's Customer, and agrees to present this information to Buyer upon request, at the level requested. Seller will participate and comply with the Innotec Group Supplier Manual accessible at [www.innotecgroup.com/supplierresource.html](http://www.innotecgroup.com/supplierresource.html). In the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms and Conditions, these Terms will take precedence.

#### **4.3 Warranty Period**

The warranty period shall be the longer of three years from the date Buyer accepts the Products, the warranty period provided by applicable law, or the warranty period offered by Buyer or Buyer's Customer to its end-users.

### **5. Inspection/Non-Conforming Products**

#### **5.1 Inspection**

Buyer may, with reasonable advance notice to Seller, inspect Seller's production processes and Property and conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Purchase Order. Seller may restrict Buyer's access as necessary to protect proprietary information and may require appropriate indemnification and releases. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Purchase Order.

#### **5.2 Non-Conforming Products**

Products or Services that do not conform to the warranties in **Section 4** will be handled by Buyer as follows: (1) reject the nonconforming Products or Services, (2) require Seller, at Buyer's option and Seller's expense (including applicable shipping costs), to either repair or replace the nonconforming Products or Services, and (3) if Buyer reasonably determines (through statistical sampling or other quality assessments) that a material amount of incoming Products are non-conforming or if Buyer receives subsequent defective material, Buyer will require Seller to implement at its expense containment, inspection, sorting, and other quality assurance procedures. To the full extent possible, Buyer will provide Seller access to any available warranty data related to the Products and to any available field-returned Products. Payment for nonconforming Products is not an acceptance, and does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects.

### **6. Recall**

Recall applies to any voluntary or government-mandated offer by Buyer to remedy an alleged defect that affects safety, quality or performance or to address an alleged failure to comply with any applicable safety standard, requirement or guideline. Unless otherwise stated in the Purchase Order, Seller will be liable for costs and damages resulting from a Recall if the Recall results in whole or in part from a failure of the Products to conform to the warranties in **Section 4**. If Seller is liable for a Recall, the extent of Seller's liability will be negotiated on a case-by-case basis based on (1) a good faith allocation of responsibility for the Recall, (2) the reasonableness of the costs and damages incurred, (3) the quantity purchased and Purchase Order price of the affected Products, and (4) other relevant factors. Buyer will notify Seller as soon as practicable after Buyer learns in writing that a Recall being considered implicates the Products, and thereafter provide Seller with all data relating to the potential Recall, and give Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its Customer, and governmental agencies, and consult with Seller about the most cost-effective method of modifying or replacing the Products in order to remedy the alleged defect or non-compliance. In the event Buyer's Customer sets-off the cost of a Recall against sums due to Buyer and Buyer determines, in good faith, that the Recall was caused by the failure of the Products to conform to the warranties in **Section 4**, Buyer may set-off the costs of the Recall against sums due to Seller prior to the negotiations set forth.

## **7. Service Requirements**

### **7.1 Service Requirements**

If a Purchase Order remains in effect at the end of the production program, Seller will also make those Products available to Buyer and/or Buyer's Customer for Buyer's past-model service requirements for a period of 10 years after the end of the vehicle production program, or as long as the Buyer's Customer requires service parts.

### **7.2 Service Payment Terms**

For the first five years past-production, service part Products will be set at the then-current production prices under the Purchase Order, plus any additional costs for the special packaging, and shipping. For the second five years, the parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service Products based on the availability and cost of needed materials, supplies, packaging, shipping and handling, related services, and other relevant factors.

## **8. Tooling/Capital Equipment**

Buyer and Seller agree that all tools and equipment needed to produce the Products will be made to Buyer's specifications. Any exception to such specifications must be stated in writing on the Purchase Order or otherwise in a signed writing by Buyer. To the extent the Purchase Order states that it is for tooling or capital equipment and unless otherwise stated in the Purchase Order, freight terms are FCA (loaded) Origin - Freight Collect, and Seller agrees to not prepay or add freight charges. Seller shall give Buyer access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges for tooling and equipment submitted by Seller against the Purchase Order or amendment. The price set forth in the Purchase Order or amendment will be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller agrees to retain all cost records for a period of two years after receiving final payment of the charges and Buyer has the right to audit such records to verify the amounts.

## **9. Property**

### **9.1 Buyer's Property**

Buyer shall own or have the right to possess all tooling, dies, gauges, fixtures, molds, and other equipment and Property used by Seller to manufacture, store, and transport Products or provide Services if Buyer or Buyer's Customer has provided or paid for the Property. Seller will hold Buyer's Property or Buyer's Customer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in Seller's possession or control. Seller shall fully insure all of Buyer's or Buyer's Customers Property at its replacement value and name Buyer as a loss payee. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Buyer shall be responsible for personal property taxes assessed against Buyer's Property. Seller will (1) at its expense maintain Buyer's Property in good condition and repair, (2) use Buyer's Property only for the manufacture, storage, and transport of Products for Buyer, unless Buyer otherwise approves in writing, (3) mark Buyer's Property as belonging to Buyer or its Customer, and (4) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's prior written approval. Seller will immediately release to Buyer, upon request, Buyer's Property and Customer's Property at any time, with or without cause and without payment of any kind unless otherwise provided in the Purchase Order. Seller will release the requested Property and other property to Buyer F.C.A. Seller's plant (Incoterms 2000), properly packed and marked in accordance with the requirements of Buyer's carrier.

### **9.2 Seller's Property**

Seller will own all property that is not Buyer's Property or is Customer's Property. Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Purchase Order. Seller grants Buyer an irrevocable option to purchase Seller's Property necessary to produce the Products at the federal taxation unamortized acquisition cost, less any amounts Buyer has previously paid to Seller for the cost of such Seller's property. Buyer shall have the right to audit Seller's financial records to verify the amounts due hereunder.

## 10. Intellectual Property Rights

### 10.1 *Buyer's Intellectual Property*

Buyer does not transfer to Seller any patent, trademark, copyright or other intellectual property right of Buyer ("Buyer's IP") through information, documents or property made available to Seller other than the right to use Buyer's IP to produce and supply Products and Services to Buyer

### 10.2 *Seller's Intellectual Property*

Buyer and Seller will work together to categorize any of Seller's technical information as Seller's Intellectual Property ("Seller's IP") in the Statement of Work or other mutually signed document. Without such agreement, Seller's technical information will not be considered Seller's IP. If the Purchase Order is terminated, Seller grants to Buyer an irrevocable, non-exclusive, worldwide right and license to use any of Seller's IP to obtain from alternate sources products and services similar to the Products and Services covered by the terminated Purchase Order. There will be no royalty fee for this license if (1) Buyer terminates the Purchase Order for Seller's Default, or (2) Seller terminates the Purchase Order other than for Buyer's Default. Otherwise, the parties shall negotiate a reasonable fee for use of Seller's IP.

### 10.3 *Intellectual Property Under the Purchase Order*

All Intellectual Property, including without limitation, processes, information, patents, trademarks, copyrights or other intellectual property developed in the performance of the Purchase Order ("Products IP") are owned by the Buyer and not by Seller. Seller agrees that all copyrightable works shall be considered "works made for hire". To the extent that, by operation of law, Seller owns any of the Products IP, Seller hereby assigns to Buyer all of its right, title and interest, including all patent and copyright rights in the Products IP.

### 10.4 *Infringement*

Seller expressly warrants that all Products manufactured for Buyer under the Purchase Order will not and do not infringe on any patent, trademark, copyright or other intellectual property right of any third party. Seller will indemnify and defend Buyer and its Customers against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Products of a third-party Intellectual Property Right (1) in the United States, the European Union, or Japan, and (2) in another jurisdiction if Seller is aware of the actual or alleged infringement in that other jurisdiction at the time the Purchase Order is issued and fails to disclose it to Buyer within 10 days after accepting the Purchase Order. If a claim under this **Section 10.4** results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, Seller will at its option and sole expense either (1) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, or (2) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (3) replace the Products with non-infringing but practically equivalent Products.

## 11. Confidential Information

Trade secrets, specifications, drawings, notes, instructions, engineering data and financial data, and other technical and business data which are supplied or disclosed by Buyer or Seller in connection with the Purchase Order, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure, will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as specified under the Purchase Order without in each case securing the written consent of the disclosing party. Buyer and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure. Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

## 12. Subcontracting

Seller may not assign or subcontract its duties or responsibilities under the Purchase Order without Buyer's written consent. An approved assignment does not relieve Seller of its duties or obligations under the Purchase Order or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Purchase Order to a designated subcontractor, Seller shall not be responsible for a breach of the Purchase Order caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

## 13. Termination

### 13.1 *Term of the Purchase Order*

The Purchase Order will remain in effect for the length of the applicable Original Equipment Manufacturer (“OEM”) program production life (including model refreshes as determined by the OEM customer) and both Buyer and Seller acknowledge the risk of the program production life being cancelled or extended by the OEM, or until cancelled pursuant to the terms of this **Section 13**.

### 13.2 *Termination for Breach or Convenience*

Buyer may terminate all or part of the Purchase Order, without liability to Seller, if Seller (1) breaches or threatens to breach any terms of the Purchase Order (2) fails to fix a nonperformance within 10 business days of written notice (3) admits in writing its inability to pay its debts as they become due, begins a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (4) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days, or (5) fails to provide adequate assurance of performance under the Purchase Order within five business days after written demand by Buyer. In addition to any other right of Buyer to terminate or cancel the Purchase Order, Buyer may, at its sole discretion terminate all or any part of the Purchase Order at any time and for any reason upon 14 days notice to the Seller. Upon notice of termination, Seller shall, unless otherwise directed by Buyer and subject to Seller’s obligations under **Section 13.4** (1) terminate all or the specified portion of the work under the Purchase Order; (2) transfer title to and deliver to Buyer the useable and merchantable Products, work in process and raw materials that Seller has produced and or purchased based upon the Releases issued by Buyer; (3) settle all claims by subcontractors approved by Buyer for reasonable direct and actual costs that are rendered unrecoverable by the termination; (4) upon request, cooperate with transition to an alternate supplier specified by Buyer.

### 13.3 *Buyer’s Obligations under Termination*

Upon Termination under **Section 13.2**, Buyer shall pay to Seller the following documented amounts: (1) the Purchase Order price for completed and delivered Products and Services and the actual cost of any work-in-process and raw materials in Seller’s possession based upon firm Material Releases (which will become Buyer’s property upon payment in full), and (2) reasonable claims of subcontractors of Seller if such claims are directly caused by termination of the Purchase Order. Buyer shall not be obligated to pay Seller for loss of anticipated profit, unabsorbed overhead, product development or engineering costs, unamortized depreciation, or general and administration burden resulting from termination of the Purchase Order. Seller’s termination claim must be submitted to Buyer within thirty days after the effective date of the termination. Buyer shall have the right to audit the records of Seller to verify the amount sought by Seller.

### 13.4 *Transition of Supply*

In connection with termination of the Purchase Order by either party including Buyer’s decision to change to an alternate Supplier, Seller will cooperate in the transition of supply, including the following: (1) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier, such that Seller’s action or inaction causes no interruption in Buyer’s ability to obtain Supplies as needed. (2) Seller will promptly provide all information and documentation reasonably requested by Buyer regarding Seller’s manufacturing process for the Products including on-site inspections, bill of material data, tooling, process detail and samples of components. (3) If the transition occurs for reasons other than Seller’s termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimates of such costs. Buyer shall have the right to audit the records of Seller to verify Transition Support expenses.

## 14. Remedies

### 14.1 *Remedies – Seller’s Default*

The rights and remedies reserved to Buyer under the Purchase Order are cumulative with and in addition to all other legal or equitable remedies allowed by law. In addition to any direct damages sustained by Buyer on account of Seller’s breach of the Purchase Order or by delivering nonconforming products, Seller will also be liable for Buyer’s direct and indirect, incidental and consequential damages including, without limitation, reasonable professional fees. In the event Buyer must commence legal action for the production or delivery of the Products or for transition support, Seller acknowledges that Buyer has no adequate remedy at law and Buyer shall be entitled to an immediate order of specific performance of Seller’s obligations under the Purchase Order and injunctive equitable relief as a remedy for any such breach.

#### **14.2 Remedies – Buyer's Property**

If Seller does not release or deliver Buyer's Property or its Customer's Property in accordance with **Section 9.1**, Buyer may at Seller's cost (1) obtain an immediate court order for possession without notice and without posting a bond, and (2) enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property and its Customer's Property. To the extent permitted by law, Seller waives any right to object to Buyer's repossession of Buyer's Property and its Customer's Property in a bankruptcy or other proceeding.

#### **14.3 Limitations of Damages**

In no event will Buyer be liable to Seller for its indirect, special, consequential (including lost profits or market share or damage to brand value), incidental, punitive, and exemplary damages, whether or not foreseeable, are excluded under the Contract to the extent permitted by applicable law. This limitation liability applies notwithstanding the type of Purchase Order or the nature of Seller's claim in contract, tort or equitable proceeding.

#### **14.4 Indemnification**

Seller agrees to indemnify and hold harmless Buyer, its subsidiaries and affiliates and their respective officers directors, members, employees, and agents from any and all claims, liabilities, damages of any kind or nature, reasonable costs or reasonable expenses incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions and other proceedings to recover for personal injury or death, property damage or economic loss) that are related in any manner or arise in any way from the Products. Seller's indemnification obligation will apply regardless of whether the claim arises in tort, contract, or otherwise, except to the extent of any liability arising solely out of the gross negligence of the Buyer. Seller's indemnification obligations will apply even if Buyer furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller.

### **15. Force Majeure**

A delay or failure by either Buyer or Seller to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence such as: acts of God, embargoes, fires, natural disasters or riots and (2) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or will occur. If Seller is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performance exceeds 30 days, the other party may cancel the Purchase Order. The change in cost or availability of raw materials, components or services based upon market conditions, supplier actions or contract disputes shall not be considered Force Majeure and will not excuse Seller's performance.

### **16. Labor Contracts**

Seller shall notify Buyer of the Contract expiration date at least six months before the expiration of a current labor contract that has not been extended or replaced. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

### **17. Customs**

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Purchase Order, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

## **18. Insurance**

Prior to commencing work on Buyer's premises or utilizing Buyer's property, Seller shall maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of Buyer's Property while in Seller's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law.

## **19. Dispute Resolution**

### **19.1 Negotiation and Mediation**

Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Purchase Order. If a dispute cannot be resolved through good faith negotiations within 45 days of a claimed breach of the Purchase Order, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the National Center for Dispute Resolution.

### **19.2 Arbitration**

If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. Any arbitration shall be conducted in Grand Rapids, Michigan. The arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and this **Section 19**. The parties agree that a court of competent jurisdiction may render judgment on and enforce any arbitration award. The cost of any arbitration shall be borne evenly by the parties and each party shall bear its own attorneys' fees and other expenses in resolving any dispute related to the Purchase Order. While arbitration proceedings are pending their obligations under the Purchase Order without setoff for any matters being contested in the arbitration proceeding.

### **19.3 Litigation**

The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

## **20. Insolvency**

Buyer, or a third party designated by Buyer may, at any time, review the financial health of the Seller. Seller will fully cooperate with such review and provide all requested financial documentation after mutually agreed to procedures have been established. Subject to **Section 11**, Buyer will use the financial information provided under this **Section 20** only to determine Seller's ability to perform under the Purchase Order.

## **21. Miscellaneous**

### **21.1 Advertising**

During and after the term of the Purchase Order, Seller will not advertise or otherwise disclose its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as may be required to perform the Purchase Order or as required by law.

### **21.2 Taxes**

Unless otherwise stated in the Purchase Order, the Purchase Order price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. The Products purchased under the Purchase Order are identified as industrial processing and may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information shall be stated in the Purchase Order or are otherwise provided by Buyer.

### **21.3 Compliance with Laws**

Seller will comply with applicable laws, rules and regulations of the country where the Products are manufactured or the Services are performed. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

### **21.4 Relationship of the Parties**

Buyer and Seller are independent contractors, and nothing in the Purchase Order makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

**21.5 Waiver**

The failure of either party to enforce any right or remedy provided in the Purchase Order or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**21.6 Severability**

A finding that any provision of the Purchase Order is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Purchase Order or the validity or enforceability of that provision in any other jurisdiction.

**21.7 Notices**

Any notice or other communication required or permitted in the Purchase Order must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day.

**21.8 Governing Law**

Unless otherwise agreed in writing, the Purchase Order will be governed by and interpreted according to the internal laws of the state of Michigan.