



## NISCO Terms and Conditions

### 1. Scope

- A. This Agreement, together with the administrative terms set forth on the applicable purchase order (e.g., quantity, delivery dates, special instructions), govern all the transactions between the Parties to the exclusion of any other terms or conditions, such as any terms or conditions included in any documents submitted by Seller which terms or conditions are expressly rejected, under which Buyer may purchase certain tangible goods from Seller (“Products”).

### 2. Acceptance

- A. This purchase order (“Order”) is an offer to Seller by Buyer for the purchase of goods and services (“Supplies”). This Order does not constitute an acceptance of any offer or proposal made by Seller . Any reference in this Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in this Order. Seller's written acceptance, Seller’s commencement of any work under this Order, or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of this Order constitutes Seller's acceptance of these terms and conditions only. Any additional or different terms and conditions proposed by Seller, whether in Seller's quotation form, acknowledgement form, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become part of this Order. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE. This Order can be modified only in written notification between Seller and Buyer. Neither the expiration nor termination of this Agreement relieves either Party of its obligation to make any and all payments due under this Agreement, nor will it relieve either party of obligations incurred prior to termination or expiration, which by their nature or term survive.
- B. Upon termination by Buyer, Buyer will pay for Products ordered and completed, but not yet delivered prior to termination. In addition, the Parties will negotiate in good faith the price that Buyer will pay for any Products ordered but not yet completed prior to the termination.
- C. Upon termination of this Agreement, other than for failure of Buyer to make required payments, Seller will continue to fulfill all Purchase Orders accepted by Seller prior to the date of termination; provided that the Purchase Orders will provide for delivery not later than 90 days following termination.

D. Upon termination of this Agreement, each Party will, at the request of the other Party, promptly return all specifications, drawings, technical information, data and designs, and other intellectual property previously directly or indirectly received from the requesting Party.

### **3. Purchase Orders and Forecasts**

A. In response to any writing issued by Buyer or any of its Affiliates for purposes of placing orders with Seller (“Purchase Order”), Seller will sell and deliver the Products identified in Exhibit A and as further specified in the relevant Purchase Order, where the term Affiliates means any legal entity that Nishikawa Cooper LLC, Inc. owns (directly or indirectly) more than 50% of the outstanding securities.

B. Purchase Orders placed by any Buyer’s Affiliate will be governed by the terms and conditions in this Agreement, however, that Affiliate will be solely responsible to Seller for any obligations, including payment obligations. For the avoidance of doubt, Buyer does not guarantee the financial obligations of any of its Affiliates making purchases under this Agreement.

C. Unless Seller provides written rejection, each Purchase Order is deemed accepted by Seller five days after issuance. Once accepted by Seller, it is Seller’s responsibility to furnish the quantity of Products specified in the Purchase Order. No variation in quantity will be accepted without the written consent of Buyer. Buyer reserves the right to return excess shipments of Product at Seller’s expense.

D. Buyer will provide Seller with good faith estimates of its annual requirements for Products that Buyer or its Affiliates may purchase from Seller, as set forth in Exhibit B (“Estimated Annual Requirement”). Buyer reserves the right to return excess shipments of Products at Seller’s expense. Throughout the Term, Seller will maintain the ability to supply at least [200]% of the Estimated Annual Requirement.

E. In addition to the Estimated Annual Requirement set forth in Exhibit B, every week, Buyer will supply Seller with an updated rolling 6-month delivery and forecast schedule (“Forecast Schedule”). The first [ 12 ] weeks of each such forecast shall constitute a firm commitment by Buyer to purchase the amount of Products set forth therein; otherwise, the parties agree that Buyer is not making a firm commitment to purchase any amount of Products set forth in such forecasts and is providing them to Seller for planning purposes only. Seller will provide Buyer with usage reports of volume purchased under this Agreement as requested.

F. Neither the Estimated Annual Requirement nor (except as provided in this Section 3) the Forecast Schedule will be construed as imposing any minimal purchase obligations on Buyer or its Affiliates and neither Buyer nor its Affiliates are required to purchase any or all quantities of the Estimated Annual Requirement.

G. Seller will not, during the Term or any time thereafter, sell the Products to any other party other than Buyer (or an affiliate of Buyer) if they are, or contain, any intellectual property of Buyer.

H. If included at Exhibit J, Seller shall provide to Buyer on a consignment basis during the Term a minimum (3) weeks' supply of each of the Products (the "Consigned Inventory") pursuant to the Consignment Stock Addendum attached hereto.

#### **4. Pricing, Payment Terms, and Invoicing**

- A. Pricing for the Products is listed in Exhibit A and cannot be increased by Seller without the written consent of Buyer. Such pricing shall be automatically reduced in each subsequent year of the Term by [five percent (5%)] from the previous year's pricing.
- B. Seller represents, warrants, and covenants that the price for each Product in Exhibit A represents the best (i.e., lowest) net price that Seller sells similar products to any other person during the Term.
- C. Payment terms are 105 calendar days after shipment date, as shown in the relevant bill of lading.
- D. Seller will, unless prohibited by law, submit all invoices to Buyer electronically. Buyer may, at its sole discretion, assess fees on Seller for all invoices that are not submitted electronically. Buyer may require the Seller to utilize Buyer's electronic invoicing system. Seller agrees to comply with all requirements of such system including, but not limited to, format, content and method of submission of invoices. Seller will be responsible for all customary and reasonable costs of utilizing the system, provided such costs are consistent with industry standards, and will not pass those costs on to Buyer.
- E. Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping law (19 U.S.C. Sec. 160 Et Seq.), and Seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses, including any anti-dumping duties, which may be imposed arising out of or in connection with any breach of this warranty.

#### **5. Continuous Improvements and Productivity**

- A. During the Term, the Parties will cooperate on continuous improvement activities relating to quality and process, communications, technology advances, and cost controls.
- B. Each year, the Parties will agree on quantitative current year result targets to be benchmarked as a measurement for the following year's continuous improvement activities ("Productivity").
- C. Seller will disclose to Buyer material cost information related to the Products and work with Buyer to achieve a minimum 7% cost reduction goal annually for each Product covered by this Agreement.

## **6. Delivery Terms**

- A. Timely delivery is of the essence and Seller will deliver all Products in strict compliance with the delivery schedules set forth in the relevant Purchase Order. Seller will indemnify Buyer for any and all damages resulting from Seller's failure to timely deliver Products, including any penalties imposed on Buyer by its customers. If appropriate to mitigate the impact of late deliveries, Seller will deliver Products via airfreight at its own cost.
- B. Shipping terms are DDP Destination. Title and risk of loss to and with respect to the Products will transfer to Buyer only upon delivery to the loading dock specified by Buyer.
- C. Delivery shall be made only by carriers designated by Buyer.

## **7. Specifications and Regulatory Approvals**

- A. At the time of delivery, all Products will meet all the requirements and specifications set forth in the Product Specifications in Exhibit C and the quality requirements set forth in the Quality Plan in Exhibit D. Additional quality requirements for purchased parts and sourced products are reference in the SQA015 document, attached hereto as Exhibit E. Exhibits C, D, E and F are collectively referred to as "Product Requirements". Any materials used in the Products shall also conform to the applicable Product Requirements. Seller is responsible for obtaining all necessary regulatory listings and permits for such materials and to ensure compliance with all applicable requirements. Alternative materials shall not be used without Buyer's prior written consent.
- B. All Product Requirements will be monitored as part of Buyer's ongoing Product pre-shipment inspection. Noncompliance with the Product Requirements will be deemed a material breach of this Agreement by Seller.
- C. Seller shall not make any of the following changes without Buyer's prior written approval, which shall be given at Buyer's sole discretion:
  - (i) changes to the Product's inner carton or outer carton;
  - (ii) changes in design, manufacturing or assembly processes which would affect form, fit, function or performance of the Products/Services purchased hereunder,
  - (iii) changes in Sellers of components and material used in the manufacturing of the Products; or
  - (iv) changes in sources of materials and components or the manufacturing location that have the potential for adversely affecting duty-free status of the Product, or make incorrect any certificate previously provided by Seller, when applicable, under the "Generalized System of Preferences - GSP" as defined in the tariff laws of the United States, whichever is applicable, or other applicable laws.
- D. Products containing unapproved changes will be considered defective and will constitute a material breach of this Agreement for which Buyer will be entitled to damages to be paid by Seller of (i) \$10,000 for the first occurrence, (ii) \$30,000 for the second occurrence with no new product development for 6 months, and (iii) \$50,000 for the third occurrence with no new product development for an extended period ("Liquidated Damages"). The Parties

intend that the Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge and agree that the Buyer's harm caused by a Product change would be difficult to accurately estimate, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Product change. The Liquidated Damages are in addition to any other remedies available to Buyer under applicable law.

- E. Seller will promptly implement any changes to the Product Requirements requested by Buyer to the extent that Seller has the capability to implement such changes.
- F. Where applicable, all Products purchased under this Agreement must have UL listing and/or other international regulatory approvals. Buyer will submit the product for UL and/or other international regulatory approval. Seller will affix the UL / International Regulatory marks and numbers on all such Products after the Products have been approved by the authorized regulatory bodies. Any future changes required by UL / International Regulatory agencies for continued listing will be made by Seller after approval by Buyer of the change, timing and any related expense.

## **8. Warranties and Inspections**

- A. Seller warrants and represents that all Products delivered will be (i) of clear title and free of any and all claims, liens, security interests or encumbrances; (ii) free of any claim of any nature by any third person, including infringement or misappropriation of any third party's intellectual property rights; (iii) of merchantable quality, free from all defects in design, workmanship and material, and fit for the particular purpose for which they are purchased; (iv) in strict accordance with the Product Requirements, any other requirements communicated by Buyer, and any representations made by Seller.
- B. Seller further warrants and represents that it will perform any services in strict accordance with the relevant Specifications and Quality Plan, in a diligent and workmanlike manner, by properly trained personnel, and in accordance with generally accepted industry standards applicable to the performance of such services.
- C. Within 60 days of receipt of Products that are not conforming to the Product Requirements, identified as damaged or in otherwise in unsaleable condition at the time of delivery, or at any time after delivery through no fault or responsibility of Buyer, or which fail to conform to any of the warranties ("Non-conforming Products"), and upon discovery by Buyer of such Non-conforming Products, the Non-conforming Products may be rejected by Buyer, or, in the event that a substantial portion of a particular lot, in Buyer's reasonable opinion, is composed of Non-conforming Products, Buyer may reject the entire lot.
- D. Payment for Products does not constitute final acceptance. Buyer will determine acceptance or rejection of Products based on stated inspection criteria in the Quality Plan. Buyer shall be under no obligation to pay for Non-conforming Products and, Buyer shall have the option of either (i) requiring Seller to replace the Non-conforming Products, at Seller's cost, or (ii) receiving a credit for the cost, including shipping charges, of the Non-conforming Products or dispose of the Non-conforming Products, at Seller's cost.
- E. Upon discovery of defective Product, Buyer may, at its sole discretion:

- (i) return the defective Product to Seller and be entitled to a credit for the price paid for the defective Product;
  - (ii) return the defective Product and require Seller to replace, repair or make usable the defective Product, at Seller's expense; or
  - (iii) repair or make usable the defective Product and charge Seller a labor rate of no less than US\$38.00 per hour, with periodic adjustments for inflation.
- F. In addition to the foregoing, Seller will indemnify Buyer for any and all other damages resulting from Non-confirming Product and defective Products. In addition, Buyer may, at its sole discretion, impose on Seller certain administrative fees arising from quality issues or supply disruptions associated with Non-confirming Products and defective Products. All the foregoing remedies are in addition to any other remedies available to Buyer under applicable law.

## **9. Compliance with Laws and Other Obligations**

### **A. Seller warrants and represents that during the Term:**

- i. Seller and all Sellers, subcontractors and agents involved in the production or delivery of Products hereunder will strictly adhere to all applicable federal, state and local laws, regulations and prohibitions of the United States, its territories and all countries in which the Products are produced or delivered including laws, regulations and prohibitions relating to, the protection of the environment, public and employee health and safety, employee hiring and equal opportunity, the working conditions, wages, hours and minimum age of the workforce and applicable licensure, permitting, etc., as may be required, including Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60), the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-300), Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R. 60-741), Executive Order 13496 (and its implementing regulations at 29 C.F.R. part 471, Appendix A to Subpart A), and Affirmative Action Laws of Disabled Veterans and Veterans of the Vietnam Era, and the Certification of Non-segregated Facilities Laws; and
  - ii. The Products will not be produced or manufactured, in whole or in part, by child labor or by convict or forced labor, and that the Products will not be transshipped for purposes of avoiding compliance with labor laws.
- B. Seller represents and warrants that it is familiar with the U.S. Foreign Corrupt Practices Act ("Anti-Bribery Laws") and agrees to comply with the provisions of the Anti-Bribery Laws. Seller will not, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving Buyer, make or promise to make any payment or transfer anything of value, directly or indirectly, to any person or entity, with the intent or for the purpose of influencing any act or decision to obtain or retain business or secure any improper advantage on behalf of Seller or Buyer. Seller shall keep full and accurate books and records of all payments made with respect to any transaction or business effected in connection with this Agreement, and, upon a showing of reasonable grounds and the provision of reasonable notice by Buyer, to make all such

books and records available to Buyer's duly authorized representatives to verify Seller's compliance with the Anti-Bribery Laws and this Agreement. Seller shall maintain an adequate compliance program to protect against breaches of the Anti-Bribery Laws. Upon a showing of reasonable grounds and the provision of reasonable notice by Buyer, Seller shall make its personnel conducting activities on behalf of Buyer under the terms of this Agreement available for compliance training, as requested by Buyer.

- C. Neither Seller nor any direct or indirect owner or shareholder of Seller is identified on the list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control ("OFAC") as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"), or are included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in the OFAC Lists. Seller will not procure any materials, components, goods or services used in connection with the Products from any person or entity that appears on the OFAC Lists or is located in country subject to economic sanctions administered by OFAC.
- D. To the extent that the Parties will exchange information or data that is controlled for U.S. export purposes under the U.S. Export Administration Regulations or the U.S. International Traffic in Arms Regulations (collectively, the "U.S. Export Regulations"), Seller will comply with all U.S. Export Regulations applicable to that information or data.
- E. Seller will take all necessary and reasonable measures to maintain the physical integrity and security of all shipments as required by Buyer and any applicable governmental agency. Seller will comply with the Customs Trade Partnership Against Terrorism requirements (CTPAT) issued by the U.S. Customs and Border Protection (CBP), including CTPAT Minimum-Security Criteria (MSC) and will provide Buyer with documented evidence proving such compliance. Additional information on the CTPAT Minimum-Security Criteria may be found on <https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat> and by reviewing the Nishikawa Cooper LLC Supply Chain Security Program Guide.
- F. Seller must disclose to Buyer any tin, tungsten, tantalum or gold ("Conflict Minerals") included in the Products, and upon request promptly take such actions and provide Buyer with such information and certifications necessary for Buyer and its customers to comply with their respective obligations under Section 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act.
- G. Prior to the shipment of any Item, Seller will provide Buyer with any and all Material Safety Data Sheets ("MSDS"), Environmental Data Sheets ("EDS") and comparable documents that are related, directly or indirectly, to the Items and that are prepared pursuant to applicable Manufacturing and Legal Requirements. Seller's obligation to provide the MSDS and EDS shall be a continuing obligation of Seller, and Seller agrees to promptly furnish to Buyer any modifications, amendments or supplements to the MSDS or EDS. For all Items to be delivered to or on behalf of Buyer in Mexico, Seller will provide Buyer with any and all applicable MSDS and EDS translated to Spanish, or otherwise provide Buyer

with such documents in English, or in accordance with such other instructions as Buyer may designate from time to time. Further, Seller agrees to promptly inform Buyer of any changes in materials or ingredients in Items, and to promptly furnish Buyer with updated or new MSDS and EDS relating, directly or indirectly, to the Items. Following Buyer's review of the MSDS and EDS and if requested by Buyer, Seller shall provide Buyer with any other information it requests concerning the ingredients or materials in the Items. Seller agrees to notify Buyer immediately upon obtaining any information or indications that Items supplied by or to be supplied by Seller have hazardous characteristics, regardless of the information provided in the MSDS and EDS. Seller also agrees to provide Buyer with any other ingredient information related, directly or indirectly, to the Items that is required to be provided by Seller under any Manufacturing and Legal Requirements.

- H. Seller acknowledges that it has been provided a copy of Buyer's Supplier Quality Manual, setting forth Buyer's requirements related to handling orders, invoicing, and timing, and penalties for delays in delivery, and related matters. Seller acknowledges receipt of the Seller Manual and agrees to comply with the terms and processes therein. The Supplier Quality Manual may be revised from time to time by Buyer and Seller agrees to comply with any such revisions upon receipt of written notice. Any failure to comply with the terms and processes in Buyer's Seller Manual will be a material breach of this Agreement.
- I. If applicable to the Product, Seller is required to ensure that all Products have a unique, scannable barcode according to the Uniform Code Council's specifications affixed to the package for product identification at the sales register. Seller accepts only UPC Version A, UPC Version E, EAN 8 and EAN 13 barcode symbologies at point of sale. All standard shipping containers (master cartons, bundles, pallets, inner packs, etc.) containing fixed multiples of the same item must have an Interleaved 2 of 5 (SSC-14) Shipping Container Code placed by Seller on the packaging according to the Uniform Commercial Council's specifications. Buyer uses this barcode symbology at the point of receipt. All cartons must be packed on the pallet with the barcode (I 2 of 5 or UPC) facing outward. Buyer receiving personnel must be able to scan the barcode without breaking down the cartons on the pallet. All barcodes must have human readable characters that include a number system character and a check digit.
- J. Buyer has the right to audit Seller and Seller's supply chain, including inspection of facilities and reviews of documents, to confirm Seller's compliance with the requirements of this Section.
- K. This Agreement may be terminated immediately by Buyer for cause, without further obligation to Seller, if the Buyer believes, in good faith, that Seller has violated the Anti-Bribery Laws, has breached any provision of this Agreement intended to assure compliance with the Anti-Bribery Laws, or has breached any other provision in this Section. Seller shall indemnify and hold Buyer harmless from any claims, suits, investigations, penalties, and fines of any kind resulting from Seller's breach of the provisions contained in this Section.



## **10. Indemnification and Insurance**

- A. Seller shall indemnify, release, defend, and hold Buyer and its Affiliates (including their respective officers, employees, directors, shareholders, representatives, customers, consultants, vendors, contractors, subcontractors, licensees, licensors, and each of their respective successors and assigns) (collectively, the “Indemnified Parties”) harmless from and against any and all liabilities, losses, damages, costs, fines, penalties, interest, and expenses (including, without limitation, attorneys’ and other professionals’ fees and litigation expenses) on account of any claim, suit, action, demand, complaint, investigation or proceeding made or brought against any Indemnified Party or on account of the investigation, defense, or settlement thereof, arising out of or in connection with the Products or Seller's performance or non-performance under this Agreement, including a breach of any term, condition, representation, warranty, covenant, undertaking, or other provision of this Agreement or purchase order (collectively, the “Claims and Losses”).
- B. Seller will respond to requests for indemnity or defense within 10 days of its receipt of the request. If Seller either (a) refuses to indemnify or defend the Indemnified Party as required in this Agreement, or fails to respond to the request within the required time period, or (b) indemnifies or defends the Indemnified Party for the matters set forth in this Agreement under a reservation of rights, then the Indemnified Party may, in its sole discretion, select counsel of its choice and control the defense and settlement of the related Claims and Losses and the Seller will pay all defense costs incurred by the Indemnified Party in connection therewith. Seller may use counsel of its own choosing in connection with any such indemnity only if (i) it indemnifies the Indemnified Party without any reservation of rights, and (ii) there is no potential conflict of interest as a result of such counsel’s joint representation of the Indemnified Party and Seller. The Indemnified Party may participate, at its expense, in the defense of any Claims and Losses. Seller may not settle any Claims and Losses without the Indemnified Party's written approval.
- C. Seller agrees to hold harmless and protect Buyer or its customers and the other Indemnified Parties against all damages, costs and expenses arising out of a claim that any goods furnished under this Agreement constitute an infringement of any Third Party Intellectual Property with respect to the design of the Product which is owned (or purported to be owned) by Seller, or for which Seller has design responsibility, where “Third Party Intellectual Property” is defined as all trademarks, patents, utility models, registered designs and the like protections, including applications thereof, confidential information, know how, inventions, design right and copyright material (wheresoever existing) which is owned by any third party, and including, without prejudice to the generality of the foregoing, rights in the nature of passing-off and unfair competition actions. Seller will defend any suit or proceeding brought against Buyer or its customers based thereon and Seller will pay all damages and costs awarded therein. If in such suit or proceeding the use of the goods is enjoined or if the importation into the country of purchase or exportation from the country of manufacture is prevented, Seller will, at its own expense and without delay, either procure for Buyer and its customers the right to continue the use, importation, or exportation of the goods or replace or modify them so they become non-infringing or, upon a showing of inability to do the foregoing, promptly remove the goods, and refund the purchase amount associated with those goods.

- D. In the event that Buyer becomes subject to any investigation or report to a governmental agency or voluntary standards organization relating to compliance with safety regulations or product safety, or becomes subject to any corrective action plan, consent agreement or order requiring corrective action (including without limitation notice, recall, retrofit, repair, replacement or the refund of purchase price of products or services, whether at the wholesale, retail or consumer distribution level), whether such corrective action plan, consent agreement or order is voluntary or is a mandate of any governmental agency or voluntary standards organization, or becomes subject to Buyer's own investigation relating to compliance with safety regulations or product safety, as the result of, arising from or in any way related to the goods, materials, products or services provided, shipped, furnished or delivered or services performed by Seller to, for, or on behalf of Buyer, Seller agrees to defend, protect, indemnify and hold Buyer harmless from any and all expenses and liabilities (including without limitation attorneys' fees and expenses, administrative costs and expenses, costs of investigation, notice, corrective action, recall, repair, replacement or the refund of the purchase price) which may be incurred in connection with any such investigation, corrective action plan, consent agreement or order requiring corrective action, or in assuring compliance or aiding or assisting compliance with such mandates. The obligations in this Section are in addition to Seller's other obligations under this Agreement.
- E. Seller will also reimburse Buyer for losses and damages suffered or liabilities incurred arising from or related to Seller's performance or non-performance under this Agreement, including a breach of any term, condition, representation, warranty, covenant, undertaking, or other provision of this Agreement or purchase order.
- F. During the Term, Seller will comply with the provisions, and maintain without lapse, the insurance set forth in Exhibit F.

## **11. Confidential Information**

- A. All information (including drawings, specifications, technical information) provided to Seller by Buyer or its Affiliates, including the existence and terms of this Agreement and information arising or resulting or relating to the commercial activities hereunder that is not otherwise publicly available, is proprietary and confidential information of Buyer ("Confidential Information").
- B. Seller will, and will cause its directors, officers, employees, consultants, affiliates, agents, material Sellers, or representatives to, protect Confidential Information in accordance to that Non-Disclosure Agreement ("NDA") executed by the, which is incorporated herein by reference. The term of that NDA is hereby amended to run concurrently with the Term. Furthermore, Seller may not disclose any Confidential Information to third parties without prior written consent of Buyer. Seller will not use Confidential Information for any purpose other than for fulfilling its obligations under this Agreement. Buyer is entitled, in addition to all other remedies available, to equitable relief by injunction or otherwise to enforce its rights and require compliance by Seller of its obligations, without needing to (i) post a bond, (ii) prove irreparable harm, or (iii) prove that money damages would not provide adequate compensation.

- C. Seller will not use Buyer's or its Affiliates' name in any promotional material (such as customer lists, advertisements or press releases) without Buyer's prior written consent.

## **12. Intellectual Property Rights**

- A. The parties acknowledge Seller's ownership of Seller's intellectual property in the Product. If, however, Seller is unable to meet its obligations under this Agreement, or is unable to meet any bona fide offer received by Buyer from a third party to manufacture the Products, Seller shall grant Buyer a world-wide non-exclusive license to Seller's intellectual property to make, use, sell, offer for sale and import the Products.
- B. Seller will, in a manner acceptable to Buyer, mark each of the Products with the Buyer's trademarks or trade names identified for the Product, if any, in Exhibit A (the "Brands"). For purposes of the foregoing, Buyer grants to Seller, during the term of this Agreement, a limited, non-exclusive, fully paid-up license to use the Brands solely in connection with Products to be sold to Buyer under this Agreement. The aforementioned mentioned license does not grant to Seller any property interest or ownership in the Brand, which shall, at all times, remain the exclusive property of Buyer or its customers, as applicable. Such license shall terminate and Seller shall cease and desist from all use of the Brands, immediately upon the expiration or earlier termination of this Agreement. Upon such termination or expiration, Seller shall deliver to Buyer all artwork and other material on which the Brands appear.
- C. Seller shall not use the Brands for any purpose other than as permitted by this Agreement and shall at no time adopt or use any word, logo or mark which is the same as or similar to the Brands, or colorable imitation, or any translation or transliteration thereof in any language. Unless otherwise expressly set forth herein, nothing herein shall be construed as granting to Seller any license under any of Buyer's patent, copyright, trademark or trade secret rights.
- D. Seller shall enforce its intellectual property against any third party selling a product similar to the Product. Buyer shall provide written notice if Buyer becomes aware of any such infringing products. Seller shall institute an action against the infringing third party or obtain discontinuance of the sale of such infringing products within ninety (90) days of receipt of such notice. If Seller fails to institute an action against the infringing third party or obtain discontinuance of the sale of such infringing products within the ninety-day period, Buyer shall have the sole discretion and power to institute, prosecute and/or settle at its own expense suits for infringement of any intellectual property owned by Seller, and if required by law, Seller will join as party plaintiffs in such suits. All expenses in such suits, except for Seller's separate legal expenses, will be borne entirely by Buyer; however, Buyer shall be entitled to a credit against purchases made hereunder in the amount of such expenses. Buyer shall keep 100% of any excess recoveries over expenses in such suits.
- E. "Improvements" means any invention, technical information, data, computer software and all documentation thereof including without limitation, source code, data base, improvement, design, copyrightable work, trademark or know-how that (1) is conceived, reduced to practice, authored, or developed by Buyer and/or Seller solely or jointly with each other or with a third party or with Buyer, during the term of this Agreement; (2) results from work done pursuant to this Agreement; and (3) relates to a product (including but not

limited to a Product), that is developed especially for Buyer by Seller, alone or together with Buyer of whatever nature, including, without limitation, product enhancements, software developments and manufacturing process improvements which are developed in pursuance of this Agreement, whether or not protectable by patent, trademark or copyright, or as a trade secret but does not include any intellectual property right that is owned or controlled by Seller as of the Effective Date and that covers any invention, technical information, data, computer program, improvement, design, copyrightable work or know-how that has been conceived, reduced to practice, authored, or developed by Seller in whole or in part solely or jointly with others prior to the Effective Date and not in contemplation of this Agreement.

- F. The Seller shall promptly disclose to Buyer all Improvements made in contemplation, or in pursuance, of the Agreement. All right, title and interest in any such Improvement made in pursuance of this Agreement solely by the Seller, or jointly with a third party or with Buyer, shall be the property of Buyer, and Seller agrees to assign, and does hereby assign, to Buyer, all of Seller's right, title and interest in and to such Improvements, and all copyright, patent, trade secret, and trademark rights therein. Buyer reserves the first option to itself to determine whether any patent, utility model, registered design, design right, copyright or the like protection shall be sought in respect of any Improvement. Buyer may apply for any patent, utility model, registered design, design right, copyright or the like protection, including, without limitation, divisional, continuation or continuation-in-part patent applications, in respect of any Improvement in any country of the world, including the right to file any applications which claim priority therefrom, and including the right to claim priority for any such application. The Seller undertakes to do all things reasonably necessary at Buyer's expense to enable Buyer to seek and obtain patent, utility model, registered design, design right, copyright or the like protection for any Improvement including without limitation, executing any necessary assignments and executing all necessary documents to procure the grant of such patent, utility model, registered design, design right, copyright or the like protection which shall be in the name of Buyer as sole owner, but naming as an inventor any officer or employee of the Seller responsible wholly or in part for the Improvement which is obtained therein.
- G. Seller agrees to grant and does hereby grant to Buyer a paid-up, worldwide, irrevocable, non-exclusive license under any intellectual property owned or under control of Seller necessary for Buyer to make, have made by a third party, use, sell, offer for sale, export and/or import any products incorporating at least one of the Improvements.
- H. Buyer shall grant to the Seller a non-exclusive license to an Improvement insofar as this is required to enable the Seller to manufacture and supply the Products to Buyer in pursuance of this Agreement, and for no other purpose. Under no circumstances whatsoever shall the Seller permit any third party to exploit any Improvement owned by Buyer unless expressly authorized to do so by Buyer. Upon cancellation or termination of this Agreement the license granted by this Section shall terminate with immediate effect and, the Seller shall not exploit any Improvement owned by Buyer in pursuance of this Agreement.

### **13. Relationship of the Parties**

- A. In fulfilling its obligations under this Agreement, Seller is acting solely as an independent contractor and not as an agent of Buyer or its Affiliates. Persons furnished by Seller will be solely its employees or agents and who will be at all times under the sole and exclusive direction and control of Seller and will not be considered employees of Buyer or its Affiliates for any purpose. Seller will be solely responsible, respectively, for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its employees or agents.
- B. Nothing contained in this Agreement is intended to give rise to, or impose upon the Parties any of the duties or responsibilities of, a partnership or joint venture between the Parties.

#### **14. Governing Law**

- A. This Agreement is governed by the laws of the State of Indiana, United States of America, including its Uniform Commercial Code, without regard to its conflicts of law principles. The Parties further agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and does not govern this Agreement.
- B. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, will be settled by arbitration to be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures then in effect. The decision and award of the arbitrator shall be final and binding and the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held and the award shall be deemed to be made in the city of Hartford, Connecticut, United States of America.

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, will be settled by arbitration at the Hong Kong International Arbitration Centre (“HKIAC”) by HKIAC in accordance with HKIAC Procedures for Arbitration then in effect, including such additions to the HKIAC Arbitration Rules as are therein contained. There will be only one arbitrator and the language to be used in the arbitral proceedings shall be English.]

**[For International Agreements with European party]** [Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules then in effect. The place of arbitration shall be London, England, there shall be only one arbitrator, and the language to be used in the arbitral proceedings shall be English.

#### **15. Force Majeure**

- A. Neither Party will be liable for delays in performance or from non-performance due to causes beyond reasonable control such as acts of God, acts of civil or military authority, action or request of government authority, strikes, riots, pandemics or epidemics. The Party affected will work diligently in attempting to remove, correct or mitigate such cause or causes as soon as possible. Promptly upon the occurrence of any event hereunder which may result in a delay in the delivery of Products, Seller will give written notice thereof to

Buyer, which notice will identify such occurrence and specify the period of delay expected to result therefrom.

## **16. Miscellaneous**

- A. Seller may not assign or delegate any of its rights or obligations under this Agreement or any purchase order issued hereunder without the prior written consent of Buyer. Buyer retains the right to assign, at its sole discretion, its rights or obligations hereunder, in whole or in part, to any of its Affiliates.
- B. If any provision of this Agreement is invalid, the remainder of this Agreement remains in effect. No waiver under this Agreement will be effective unless it is in writing and signed by the Party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.
- C. No amendment or change to this Agreement is effective unless it is in writing and signed by the Parties.
- D. This Agreement may be executed simultaneously in two or more counterparts, each of which will be an original, and all together constitute one instrument. Delivery of signatures to this Agreement in PDF document format exchanged via electronic mail will be legally binding and effective for all purposes, including evidentiary purposes.
- E. This Agreement, along with any exhibits and schedules attached, and purchase orders issued hereunder, is the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written and oral, regarding such subject matter. The Parties acknowledge and represent that they have not relied on any representation, assertion, guarantee, explanation, warranty, collateral contract or other assurance, except those set out in this Agreement. The Parties waive all rights and remedies, at law or in equity, arising or which may arise as a result of a Party's reliance on such other representation, assertion, guarantee, explanation, warranty, collateral contract or other assurance.
- F. In the event of any conflict between a specific term or condition of this Agreement and a specific term or condition contained in an exhibit to this Agreement, the specific term or condition of this Agreement controls and takes precedence unless it is stated in a clear and unambiguous manner in the exhibit that the specific term or condition of the exhibit is in conflict with this Agreement and takes precedence. The terms and conditions of this Agreement and its exhibits will control over any additional, conflicting or inconsistent terms contained in any quotation, acknowledgment, invoice, or any other document submitted by Seller.
- G. The respective obligations of the Parties under this Agreement that by their nature would continue beyond the termination, cancellation or expiration, survive any termination, cancellation or expiration, including, but not limited to, obligations to indemnify, provide warranties, insure and maintain confidentiality.

