

**GENERAL TERMS AND CONDITIONS FOR PURCHASE OF  
MATERIALS, EQUIPMENT AND RELATED SERVICES – EFFECTIVE 3/18/16**

**ARTICLE I - DEFINITIONS**

The following terms, when used in this Agreement (defined below), shall have the meanings given below unless, in any particular instance, the context clearly indicates otherwise:

- A. “Purchase Order” means the Purchase Order submitted by Purchaser, which according to its terms is made part of this Agreement. The Purchase Order may contain additional terms and other messages unique to this transaction.
- B. “Purchaser” means the respective affiliate or subsidiary Magnus International Group, Inc. for itself and/or as an authorized agent of the affiliate company or companies (and their respective successors and assigns) set forth on the face of the Purchase Order for which the Product is procured hereunder. If more than one company is identified as the Purchaser, the liability of each company named shall be several, not joint, and shall be limited to such company’s interest in this Agreement, as identified on the Purchase Order.
- C. “Purchaser’s Site” includes all locations owned or leased by Purchaser, for which the Product is intended, to which the Product is to be delivered or where the services are to be carried out.
- D. “Specifications” means the portion of this Agreement that describes the products and services to be delivered by Supplier under this Agreement, including the profile, specifications, formulations, standards, blueprints, drawings or any other standard provided by Purchaser. Should any conflict occur between portions of the Specifications and these terms and conditions, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under these terms and conditions.
- E. “Supplier” means the organization which is bidding and/or, if awarded the order, the organization furnishing the Product.
- F. “Product” means all product, work, services, labor, materials, equipment, data and other obligations covered by or intended for Supplier to perform or supply under this Agreement, as specified in the Purchase Order, together with miscellaneous expendable job supplies, installation-related equipment and/or tools, transportation, facilities and/or services for the complete execution of the Agreement.

**ARTICLE II - TERMS OF AGREEMENT**

- A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments, exhibits, revisions and supplements thereof, shall constitute the agreement between Purchaser and Supplier (the “Agreement”). In case of any error, inconsistency or omission in the various documents of the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Supplier.
- B. Offer and Acceptance. Supplier’s acknowledgement, commencement of performance to furnish the materials, equipment or services which are the subject of this Agreement, or any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Supplier of this Agreement and all of its terms and conditions. Acceptance of this Agreement is expressly limited to Supplier’s assent to all of the terms and conditions of this Agreement. Additional or different terms provided in Supplier’s acceptance of Purchaser’s offer which vary in any degree from any of the terms herein or expressly referenced on the face of the Purchase Order herewith shall be deemed material and are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by Purchaser in response to an offer by Supplier, and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Supplier’s assent to all of the terms and conditions of this Agreement. Additional or different terms in any acknowledgement, invoice or communication submitted by Supplier, or any attempt by Supplier to vary in any degree any of the terms of this Agreement, unless expressly agreed to by Purchaser, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Supplier, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser. Supplier acknowledges and agrees that there is no privity of contract with Magnus International Group, Inc. or any other Magnus International Group subsidiary or affiliate other than the party that is named on the Purchase Order. Supplier acknowledges that only the entity named on the Purchase Order is obligated under this Agreement, and neither Magnus International Group, Inc. nor any of its subsidiaries and affiliates not named on the Purchase Order are liable for any of the duties and obligations under this Agreement.
- C. Integration; Modification. This Agreement sets forth the entire agreement of Purchaser and Supplier concerning the subject matter hereof. No other agreements or understandings, whether written or oral, whether express or implied, shall be binding on Purchaser and Supplier. No amendment, modification or rescission of this Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification or rescission are sought to be enforced.

- D. Non-Exclusivity. This Agreement is not exclusive, and Purchaser may, at its sole discretion, contract with others to supply the Product or to perform such work as is herein contemplated. Purchaser may also perform such work with its own forces.

### **ARTICLE III - SHIPMENT AND DELIVERY**

- A. A profile in a form provided by Purchaser shall be furnished with each shipment.
- B. Unless otherwise specified on the face of the Purchase Order, shipments shall be made F.O.B. destination. Title and risk of loss of goods passes to the Purchaser upon acceptance of delivery. The Supplier pays all freight and related charges and is responsible for filing loss and damage claims prior to acceptance of delivery by the Purchaser.
- C. THE OBLIGATION OF SUPPLIER TO MEET THE DELIVERY DATES, SPECIFICATIONS AND QUANTITIES SET FORTH HEREIN IS OF THE ESSENCE OF THIS ORDER. Deliveries are to be made both in quantities and at times specified herein, or, if not, such quantities and times are as specified pursuant to Purchaser's subsequent written instruction. Unless otherwise agreed, Purchaser will not accept COD shipments. Supplier shall notify Purchaser immediately of any delay in delivery or shipment. Shipments in greater or lesser quantities than ordered may be returned at Supplier's expense, unless written authorization is issued by Purchaser. If Supplier's deliveries fail to meet schedule, Purchaser, without limiting its other rights or remedies, may either direct expedited routing and charge the excess cost incurred thereby to Supplier or cancel all or part of the order. Goods which are delivered in advance of schedule are delivered at the risk of Supplier and may, at Purchaser's option: (1) Be returned at Supplier's expense; (2) Have payment therefor withheld by Purchaser until the date that goods are actually scheduled for delivery; or (3) Be placed in storage for Supplier's account until delivery dates specified herein.

### **ARTICLE IV - INSPECTION; DEFECTIVE OR NONCONFORMING GOODS**

The goods and all parts, material and workmanship entering into the performance of this Agreement shall be subject to inspection, tests and count by Purchaser at any time or place at the discretion of Purchaser, whether during or after manufacture or delivery. If any of the goods are defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, Purchaser, in addition to its other rights, may reject the same for full credit or may correct the defect or nonconformity or replace same at Supplier's expense, or require prompt correction or replacement thereof by Supplier at Supplier's expense, including transportation charges. Nothing herein shall relieve Supplier of the obligation to make full and adequate testing and inspection of goods sold hereunder. Any goods rejected by Purchaser shall be returned to Supplier at Supplier's risk and expense and shall not thereafter be tendered for acceptance without Purchaser's written consent. The weight of Product shall be governed by the scales designated on the face of the Purchase Order (if any), the determination of which shall be conclusive and binding, absent manifest error.

### **ARTICLE V - CONTRACT PRICE AND PAYMENT**

- A. Net Pricing. Prices stated hereunder apply as a maximum to all shipments made or services rendered hereunder. This Agreement shall not be filled at prices higher than the price listed on the face of the Purchase Order. If the price and pricing terms are omitted from the face of the Purchase Order, the price of the product and/or service shall be determined by the lower of: 1) the price last quoted or paid for the product and/or service; 2) the prevailing market price at the time of performance or shipment; or 3) the price set forth by the Parties and agreed to in writing. Purchaser shall have no obligation to honor invoices for goods or services at any increased price until such increase shall have been accepted and confirmed in writing by Purchaser. Unless otherwise set forth herein, the price set forth in this Agreement includes all freight and related expenses, as well as any and all applicable federal, state, and local taxes and duties or other charges. Unless otherwise set forth herein, no charge will be allowed for boxing, packing, crating or carting or any other additional charges in excess of the prices stated hereunder. All amounts referenced herein are in United States dollars. Except to the extent otherwise provided herein, Supplier shall pay all taxes, duties and levies, and all other fees and charges imposed by any governmental entity with respect to this Agreement and the materials, equipment and services provided hereunder. Price or prices quoted by Supplier shall include all contributions for unemployment compensation, workers' compensation, social security and other employee benefits, and for the cost of any insurance required by this Agreement.
- B. Invoicing.
1. Invoices shall be submitted to the address specified in the Purchase Order, except that invoices submitted electronically will have additional requirements. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified or further broken down as Purchaser may require for accounting and payment purposes. Any taxes which are payable by Purchaser hereunder shall be shown separately on any bids and invoices sent to Purchaser. Any disputed invoice or portion thereof need not be paid, but in such case, Purchaser shall promptly notify Supplier of any rejected invoice or portion thereof with reasons for such rejection. Any invoice shall be submitted upon delivery of the Product, not later than the 10th day of each month, or as otherwise mutually agreed (the payment option to be identified in the Terms of Payment on the Purchase Order and/or attached hereto).
  2. Carrier Shipments. Supplier shall forward to Purchaser, with the invoice, original and duplicate bills of lading or express receipts, signed by the carrier, for materials and/or equipment shipped. If shipments are made through Purchaser's carrier, different obligations may apply.

- C. Payment. Each invoice shall, after approval by Purchaser, be processed for payment in accordance with the Terms of Payment as set forth in the Purchase Order and/or as attached hereto for the amount of each approved invoice less any monies retained per the Terms of Payment or under Article V (D) below. Unless otherwise set forth herein, payment terms are net 60 days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the material by Purchaser, whichever is later. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the services or goods called for hereunder.
- D. Withholding. If Purchaser has a claim under this Agreement, regardless of when it is discovered, including a claim that: (1) Supplier's invoice is erroneous; (2) The Product is deficient, defective or incomplete; (3) A third party claim has been asserted or there is reasonable evidence indicating the possibility of a claim; (4) Supplier fails to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; (5) Purchaser, another supplier, subcontractor or other party suffers damage or injury which is attributable to Supplier; or (6) Supplier has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs or loss against any amount invoiced to it. If any monies are so withheld, they shall be paid only when, without cost to Purchaser, the cause of such withholding has been eliminated. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Supplier.
- E. Audit. Purchaser shall have the right to audit books and records of Supplier upon reasonable notice for the purpose of confirming the amount due Supplier under this Agreement.

## **ARTICLE VI - INTELLECTUAL PROPERTY RIGHTS**

Supplier warrants that the goods and services provided by Supplier hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not been and will not be previously assigned, licensed or otherwise encumbered. If the Product or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, Supplier shall, at its expense and within a reasonable time, either: (1) Secure for Purchaser the right to use the Product or any portion thereof which is said to be infringing by procuring for Purchaser a license or otherwise; (2) Replace the Product or such portion thereof with non-infringing Product that meets the requirements of this Agreement; or (3) Remove such infringing Product or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Product, all without damage or injury to Purchaser's other property.

## **ARTICLE VII - WARRANTY**

- A. Warranty. Supplier warrants that all Product furnished by Supplier hereunder (i) will fully conform to the Specifications and the terms of this Agreement, and with all drawings, samples, and other descriptions of Purchaser, (ii) will not be adulterated and will be properly labeled as required by federal and state statutes and regulations, (iii) will be of good design, material, and workmanship, free from defects, merchantable and fit for the ordinary purposes for which such Product is used or intended and for any particular purposes of Purchaser of which supplier is aware or should be aware, (iv) will be produced and supplied in compliance with all applicable laws; (v) will not infringe or misappropriate any third party's patent or other intellectual property rights; and (vi) that (a) all services performed under this Agreement will be performed by Supplier using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and (b) Supplier shall devote adequate resources to meet its obligations under this Agreement. The warranties set forth in this section are cumulative and in addition to any other warranties provided by law or equity. Unless otherwise specified and agreed to in writing by Purchaser, the foregoing warranties shall continue in effect for a period of two (2) years from the date of delivery of the Product to Purchaser or, in the case of services, from the date of performance of the Product and final acceptance of same by Purchaser.
- B. Replacement and Repair. When any Product is modified, adjusted, repaired or replaced, or reperfomed, the modified, adjusted, repaired, replaced, or reperfomed Product will be subject to the same warranties, the same conditions and the same remedies provided for the original Product, provided that the warranty period for the modified, adjusted, repaired, replaced, or reperfomed Product, shall extend from the date of modification, adjustment, repair, replacement or reperformance. All such defective or non-conforming Product shall be removed from Purchaser's Site if necessary. Supplier shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- C. Remedies. If any Product does not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Supplier's sole expense: (1) Reject such Product; (2) Require Supplier to repair or correct such Product as necessary to render them in conformance with the foregoing warranties and consistent with Purchaser's time schedule; (3) Return such Product, and receive a full refund of the contract price; or (4) Make any corrections required to cause such Product to fully fulfill the foregoing warranties and charge Supplier for the costs incurred by Purchaser thereby. Supplier shall reimburse Purchaser for all expenses reasonably incurred by Purchaser in connection with a breach of the foregoing warranties (including transportation, storage, administrative and other incidental expenses of Purchaser). If Supplier does not remove defective or non-conforming Product within a reasonable time fixed by written notice from Purchaser, Purchaser may remove and store such Product at the expense of Supplier. If Supplier does not pay the cost of such removal and storage within ten days thereafter, Purchaser may, upon ten additional days' written, notice sell such Product at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs. The remedies set forth in this Agreement are cumulative and shall not preclude any other remedy available to Purchaser at law or in equity.
- D. Title. Supplier also warrants that the Product is free of defects of title. Such warranty of title shall continue without limitation as to time.

- E. Survival. Supplier agrees that all of its warranties shall survive performance and acceptance of and payment for the Product and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the Product.
- F. Acceptance Tests. Purchaser shall be notified of and may witness any acceptance tests or inspections that are or may be agreed upon. Supplier shall not be relieved of its responsibility for performance in accordance with this Agreement by reason of Purchaser's or Supplier's conducting or witnessing tests or inspections.

## **ARTICLE VIII - INDEMNITY**

- A. Supplier's Indemnity. Supplier shall indemnify, defend and hold harmless Purchaser, its subsidiaries and affiliates, and their respective agents, officers, employees, successors, assigns and indemnities (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs) incurred in connection with the investigation, defense and settlement of any claim asserted against any Indemnified Party or the enforcement of Supplier's obligations under this Article IX (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Product performed or to be performed, the presence of Supplier and/or its subcontractors at Purchaser's Site, and/or the actions or omissions of Supplier and/or its subcontractors, including, without limitation, Losses relating to: (1) Bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Supplier or by any Subcontractor; (2) Damage to or loss of use of property of Purchaser, Supplier, any Subcontractor, or any third party; (3) Any contractual liability owed by Purchaser to a third party; or (4) Any breach of or inaccuracy in the covenants, representations and warranties made by Supplier under this Agreement. Purchaser shall be entitled to control the defense of any action indemnified hereunder, with legal counsel of its own choosing.
- B. Waiver of Immunities. If an employee of Supplier or its Subcontractor, or such employee's heirs, assigns or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Supplier, for itself, its successors, assigns and subcontractors, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Supplier could preclude its joiner by such Indemnified Party as an additional defendant or avoid liability for damages, contribution, defense or indemnity in any action at law, or otherwise. Supplier's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Supplier under any workers' compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Supplier or anyone employed directly or indirectly by Supplier or anyone whose acts for which Supplier may be liable.
- C. No Impairments. Supplier's obligations under this Article IX shall not be limited to the extent of any insurance available to or provided by Supplier.

## **ARTICLE IX - INSURANCE**

- A. Supplier's Insurance. If the Supplier is furnishing services on Purchaser's Site, such as technical direction for installation and/or start-up, the Supplier agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Product and throughout the duration of the Product, Certificates of Insurance evidencing current coverage listed below. These certificates shall be endorsed with substantially the following language:

"This policy will not be cancelled or allowed to lapse, and no change shall be made in this policy which alters, restricts or reduces the insurance provided or changes the name of the insured without first giving at least thirty (30) days' notice in writing to (Insert Name of Purchaser), with receipt of notice acknowledged."

1. Commercial General Liability (CGL) insurance, including products-completed operations, independent contractors and contractual liability coverages. Coverage under this policy shall have limits of liability of not less than \$2,000,000 per occurrence, combined single limit for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.
2. Automobile Liability insurance, including non-ownership and hired car endorsement, with minimum limits of \$1,000,000 per occurrence, combined single limit.
3. Workers' Compensation coverage in the statutory amounts under the workers' compensation act(s) of the location(s) in which the Product is to be performed, for the current period.
4. Employer's Liability with a minimum limit of \$1,000,000 for each accident or illness.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- B. Additional Insured. Purchaser and its subsidiaries and affiliates shall be included as an additional insured for CGL and Automobile Liability policies, understanding that said policies shall be primary and non-contributory, with insurance carried by Purchaser, and shall contain a cross-liability clause providing severability of interests so that coverage will respond as if separate policies were in force for each insured. A signed copy of the endorsement adding Purchaser and its subsidiaries and affiliates as an additional insured shall be attached to the certificate of insurance providing general liability coverage.

- C. Lapse of Coverage. In the event of cancellation or lapse of or prohibited change in any policy for which a certificate is required to be furnished under this Agreement, Purchaser shall have the right to suspend the work of Supplier until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates.

If any such insurance shall be about to lapse or be cancelled, Supplier shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Supplier fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Supplier and shall be a legitimate deduction from any sum due it from Purchaser.

- D. Waiver of Subrogation. Supplier and any of its subcontractors shall waive and hereby waives any rights of subrogation which the Supplier or any of its insurers may have against Purchaser, its affiliates and each non-affiliated company disclosed in this Agreement, as well as their respective agents or employees.

## **ARTICLE X - ENCUMBRANCES**

Supplier shall neither file nor cause or permit to be filed any lien or encumbrance with respect to the work to be performed or material furnished hereunder and hereby expressly waives any right to file or cause to be filed such lien or encumbrance. Supplier, in its subcontracts and agreements with suppliers, shall require all subcontractors and suppliers to expressly waive the right to file liens and shall provide Purchaser with copies of such waivers. Supplier hereby agrees to indemnify and save Purchaser, its subsidiaries and affiliates harmless against any and all liens and encumbrances arising out of or in connection with performance of this Agreement.

## **ARTICLE XI - DEFAULT**

- A. Events of Default; Termination. Supplier agrees that if: (1) Supplier fails to comply with applicable laws and ordinances; or (2) Supplier assigns or subcontracts this Agreement or any part hereof without the consent of Purchaser; or (3) Supplier otherwise fails or refuses to perform its obligations under this Agreement in any respect; or (4) Supplier fails to provide Purchaser upon request with adequate assurance of future performance of this Agreement; or (5) Supplier becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of Supplier or of any substantial part of Supplier's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against Supplier are acquiesced in or are not dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency; or (6) The Product to be sold by Supplier hereunder or any part thereof shall in the reasonable opinion of Purchaser be unnecessarily delayed by Supplier, then Purchaser may cancel, without liability to Supplier, all or any part of this Agreement and/or pursue any further remedies available at law or in equity.

- B. Remedies. In the event of termination by Purchaser for cause, Supplier shall, at the option of Purchaser, deliver to Purchaser the raw materials and work-in-process required in order to perform under this Agreement. Purchaser shall have the right, at its election and without prejudice to any other remedies, to purchase the raw materials or similar material itself, continue and complete the work or any part thereof, by contract or otherwise, deducting the cost of such completion from the contract price, or in the alternative, paying to Supplier the reasonable costs of such raw materials and work-in-process. In the event of such termination, Purchaser shall not be required to obtain the lowest figure for completing the Product, but may make such expenditures as in its sole judgment shall best accomplish such completion. The expense, including additional management and administrative services incurred by Purchaser for completing the Product, for remedying defective Product and damage done by Supplier and any other expenses sustained by Purchaser by reason of Supplier's default and/or failure to perform, shall be charged to Supplier. Supplier shall, if requested to do so in such written notice of termination or a written notice thereafter given, immediately remove its employees, representatives, tools, equipment and other property from Purchaser's Site. If Supplier should fail to effect such removal within a reasonable period, they may be removed by Purchaser at Supplier's expense. In any such event, Supplier shall be liable to Purchaser for any and all losses, damage and excess cost in completing said work caused by its failure to carry out this Agreement. Purchaser's rights and remedies set forth in this Article are cumulative and not exclusive, and are in addition to any other rights and remedies provided at law, in equity or under this Agreement, and they may be pursued separately or concurrently as Purchaser determines.

## **ARTICLE XII - CHANGES TO SCOPE OF WORK**

Purchaser may, at any time, by written notice, make changes altering, adding to or reducing the scope of the work for the Product, or change the specifications, packing and shipping instructions. Under this Agreement, delivery schedule changes include time and/or place of delivery, quantities, sequencing or accelerating work. Supplier's performance of additional work or changes to the Product shall in no way be a basis of claims involving loss of efficiency on any work performed or to be performed or Product supplied under this Agreement. Performance of extra work or changes to the Product shall not be a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional work or changes to the Product. Such changes shall be initiated by written order of Purchaser, and Supplier shall submit the proposed cost or credit to Purchaser for any changes in the Product within fifteen (15) working days after receipt of the written order for Purchaser's approval. No change to the cost or schedule of the Product shall be binding upon Purchaser without Purchaser's written approval. Supplier shall be paid for any additional Product by an amount to be determined, at Purchaser's option, by: (1) Unit prices; (2) Lump sums; or (3) Other methods of reimbursement, in each case as designated in the Purchase Order and/or the attachments thereto, or as subsequently agreed upon. Purchaser may authorize minor changes in the Product not involving an adjustment in the contract price or time for performance, which are consistent with the overall intent of the Agreement.

## **ARTICLE XIII - CANCELLATION AND SUSPENSION**

- A. **Right to Terminate or Suspend.** Purchaser may terminate this Agreement or suspend Supplier's performance of the Product, in whole or in part, at any time without cause and for its own convenience, by giving Supplier written notice. After receiving a notice of suspension or termination, and except as otherwise directed by Purchaser, Supplier shall: (1) Stop the Product on the date and to the extent specified therein; (2) Place no further orders or subcontracts except as may be necessary for completing such portions of the Product as have not been terminated or suspended; (3) Terminate all orders and subcontracts to the extent that they relate to the portions of the Product terminated (or suspend all orders and subcontracts to the extent that they relate to the portions of the Product suspended); and (4) Take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Product which is in Supplier's possession and any other items in which Purchaser has or may acquire an interest.
- B. **Deferral of Deliveries.** Purchaser may defer delivery of materials, equipment and any other portion of the Product, at any time for its own convenience, by giving Supplier written notice. Supplier will adjust its manufacturing schedules consistent with Purchaser's deferral request. Product on which delivery is deferred by Purchaser may be placed in storage by Supplier for Purchaser's account, and reasonable charges and direct expenses in connection therewith will be paid by Purchaser.
- C. **Compensation.** If this Agreement is terminated for convenience of Purchaser, Purchaser shall pay Supplier its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination; however, Purchaser shall be entitled to all the Product paid for by it or, at Purchaser's option, Supplier shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Supplier shall furnish all necessary documentation to substantiate its expenses to Purchaser's satisfaction. Supplier shall make every reasonable effort to mitigate costs. Purchaser shall not be liable for lost profit, anticipated profit or unabsorbed indirect costs or overheads. Purchaser's liability for termination expenses shall not exceed, in any event, the unpaid balance of the contract price. The compensation described in this paragraph shall be Supplier's sole and exclusive compensation and remedy if this Agreement is terminated for convenience. In no event will indirect expenses, overhead expenses or anticipated profit be reimbursed by Purchaser. Any payments made by Purchaser as a result of postponement of performance shall be credited to payment of the contract price.
- D. **Adjustment of Price and Schedule.** Suspension hereunder shall not affect the contract price or the period of performance, unless Supplier experiences a cost increase or time delay as a result of such suspension and notifies Purchaser in writing detailing such effect(s). Such notification shall be filed with Purchaser within thirty (30) days after such suspension is terminated or extended and shall be accompanied by sufficient documentation to prove a cost increase or time delay, as the case may be.

## **ARTICLE XIV - COMPLIANCE WITH LAWS, REGULATIONS AND PERMITS**

- A. During the performance of this Agreement, Supplier shall strictly comply with all federal, state and local laws, rules and regulations, and executive orders applicable to the Agreement.
- B. Purchaser and Supplier agree that Purchaser shall not have any responsibility for any hazardous or toxic materials, wastes or substances ("hazardous substances") at Purchaser's site and that Purchaser shall have no discretion or control over (or participation in) the use, treatment, storage, transportation, disposal, release, investigation or remediation (collectively, "handling") of any such hazardous substances and no authority or obligation to make decisions or implement actions to prevent, abate or remediate any conditions caused by the handling of such hazardous substances. Supplier agrees to release, hold harmless, defend and indemnify Purchaser from and against all actual or threatened claims, demands, orders, losses, lawsuits, liabilities, damages, penalties, fines, expenses and costs (including attorneys' and expert fees) arising from or related to: (1) The handling of hazardous substances at Purchaser's site or in relation to the Products or the services sold or provided by Supplier hereunder; and (2) Any noncompliance (or alleged noncompliance) with environmental, health and safety laws with respect to Purchaser's site, or any products and services sold or provided by Supplier hereunder. For purposes of this Section, "with environmental, health and safety laws" means any federal, state, local or foreign laws, regulations, codes, rules, orders, ordinances, permits or requirements pertaining to the environment or workplace safety and health, including, without limitation, the Comprehensive Environmental Response,
- C. Compensation and Liability Act, 42 USC § 9601 et seq. (as amended), the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (as amended), and the Occupational Safety and Health Act, 29 USC § 651 et seq. (as amended).

## **ARTICLE XV - SET OFF**

Purchaser shall be entitled at all times to set-off any amount owing from Supplier to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

## **ARTICLE XVI - LIMITATION OF LIABILITY**

Under no circumstances shall Purchaser, its subsidiaries and affiliates be liable for any anticipated profits or for incidental or consequential damages.

## **ARTICLE XVII - ASSIGNMENT AND SUBCONTRACTS**

- A. Supplier may not assign any rights or claims or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Purchaser, which may be withheld at Purchaser's sole discretion. In the event of any assignment or delegation permitted hereunder, Supplier shall continue to be liable for the performance of its obligations hereunder. For purposes of this Agreement, the term "assignment" shall include a transfer of Supplier's rights hereunder, and/or a succession to its obligations hereunder: (1) By operation of law, including a merger, consolidation, corporate reorganization, reclassification or liquidation of Supplier or a sale of all or substantially all of Supplier's assets; or (2) By a change in the control of Supplier. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Supplier's management and policies, whether through ownership of or the right to vote a majority of the voting stock in the case of a corporation, or the comparable interest in the case of any other entity, or by contract or otherwise.
- B. If Supplier proposes to subcontract any of the Product hereunder, it shall submit to Purchaser the name of each proposed subcontractor(s) prior to engaging such subcontractor(s), with the proposed scope of the Product to be undertaken and such information about the subcontractor(s) as Purchaser may reasonably request. Purchaser may reject any and all subcontractors at its absolute discretion.

## **ARTICLE XVIII - NON-WAIVER**

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of this Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

## **ARTICLE XIX - PROHIBITION OF PUBLICITY**

Supplier shall not refer to this Agreement or reference Purchaser or its subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without express written consent of Purchaser.

## **ARTICLE XX - CONFIDENTIALITY**

- A. Supplier acknowledges that, in the course of this engagement, it may have access to and/or be in possession of Confidential Information of Purchaser. "Confidential Information" shall include scientific and technical information, formulas, devices, concepts, inventions, designs, drawings, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers or suppliers and processes, data concepts and know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Supplier shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Product. Access to Confidential Information shall be restricted to Supplier's employees with a need to know such information in connection with the Product.
- B. The restrictions set forth in this Article shall not apply to Confidential Information which Supplier can establish by documentary evidence: (1) Is generally known to or readily ascertainable by the public other than through an act or omission of the Supplier or its employees or agents; or (2) Was already known to Supplier prior to the time it was disclosed to Supplier by Purchaser; or (3) Was disclosed to Supplier by a source other than Purchaser without breach of this or any other agreement by the person disclosing to Supplier and without breach of this Agreement or any other duty of Supplier.
- C. Supplier shall incorporate the above provisions in all agreements with its subcontractors, agents and assigns.

## **ARTICLE XXI - SEVERABILITY**

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

## **ARTICLE XXII - GOVERNING LAW**

Unless otherwise stated on the face of the Purchase Order, this Agreement is to be governed by and interpreted in accordance with the law of the State of Ohio. Purchaser shall not be required to arbitrate disputes before trade associations nor shall it be regulated by the rules and regulations set forth by trade associations, including but not limited to the Trade Rules & Binding Arbitration of the National Grain and Feed Association (NGFA), the American Fats & Oils Association, the National Soybean Processor Association, or the Association of American Feed Control Officials. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. This Contract is entered into in the State of Ohio and exclusive jurisdiction and venue of any dispute shall properly lie with The District Court of the County of Lake, State of Ohio or with the United States District Court for the Northern District of Ohio. Any legal suit,

action or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to this Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Lake, State of Ohio, and Supplier waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

### **ARTICLE XXIII - INTERPRETATION**

The following principles of interpretation shall apply to this Agreement: (1) Paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (2) Neither Purchaser nor Supplier shall be considered to be the party responsible for the drafting of any particular provision of this Agreement; (3) The words “hereof,” “herein” and “hereunder,” and words of similar import, shall refer to this Agreement as a whole and not to any particular provision hereof; (4) The word “including” means “including, but not limited to” and shall be interpreted as broadly as possible; (5) Words in the singular include the plural and vice versa; (6) All references to “days” shall be calendar days (and not merely business days, unless the Agreement so states); and (7) Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties’ intent to the maximum extent permitted by applicable legal requirements.

### **ARTICLE XXIV - EXECUTION AND COUNTERPARTS**

This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.