



## GENERAL TERMS AND CONDITIONS OF PURCHASE

*(version 4 October 2008 revised 1 September 2010)*

### 1. PURCHASE ORDERS:

- (a) In this Agreement, unless the context requires otherwise, "Purchaser" means the person specified as the purchaser (or is otherwise identifiable as the person purchasing products) in the relevant purchase order and "Seller" means the person specified as the vendor or seller (or is otherwise identifiable as the person from whom the Purchaser is purchasing products) in the relevant purchase order. This Agreement shall govern all purchases of products by the Purchaser (and its successors and assigns) from the Seller and sales of products by the Seller to the Purchaser.
- (b)
  - (i) The Purchaser shall purchase products from the Seller by issuing purchase orders. The terms and conditions of this Agreement shall apply to the purchase order.
  - (ii) The purchase order shall be deemed accepted on the Purchaser's terms and conditions contained in such purchase order and in this Agreement which is incorporated by reference upon the Seller's acknowledgment of the purchase order, the Seller's commencement of performance, the Seller's acceptance of any payment under the purchase order or the Seller's failure to deliver a written notice of rejection within ten (10) days of the Seller's receipt of the purchase order. The Purchaser may without liability to the Seller, modify or cancel the purchase order in whole or in part, at any time prior to or after the Seller's acceptance. However the Purchaser shall provide the Seller with reasonable notice if it makes modifications or cancellations after the purchase order has been accepted by the Seller.
  - (iii) The Purchaser rejects any additional or inconsistent terms and conditions offered by the Seller at any time or in any acknowledgement or acceptance form, invoice or other document used by the Seller and irrespective of the Purchaser's acceptance of or payment for the Seller's products without need for notice of such rejection to the Seller and any such additional or inconsistent terms and conditions shall not become part of the purchase order without the Purchaser's written consent.

- (iv) The terms and conditions set out in the Purchaser's purchase order and in this Agreement constitute the entire agreement between the parties and no change to or modification of the purchase order shall be binding upon the Purchaser unless in writing and signed by an authorised representative of the Purchaser.
- (c) If the products which are the subject of any purchase order are to be used in carrying out or otherwise used in connection with another contract entered into between the Purchaser and any of the Purchaser's customers (the "**Purchaser-Customer Contract**"), and such Purchaser-Customer Contract is specified in the purchase order or the Seller has been informed or is aware of such Purchaser-Customer Contract, such purchase order shall be subject to the contract conditions of the relevant Purchaser-Customer Contract insofar as the same are applicable. Relevant details of any such contract conditions will be supplied by the Purchaser to the Seller. The Seller's acceptance or deemed acceptance of the purchase order will also constitute the acceptance of such Purchaser-Customer Contract conditions in so far as the conditions are relevant.
- (d) Nothing in this Agreement nor in any purchase order shall bind the Purchaser to purchase any minimum amount of products or any products from the Seller, unless otherwise agreed in writing.
- (e) The Seller shall notify the Purchaser in writing at least six (6) months prior to the Seller ceasing to produce, sell, ending or limiting support of any of such products or otherwise discontinuing any of such products which the Purchaser has acquired from the Seller in the preceding thirty-six (36) months. The Seller shall also provide the Purchaser the necessary assistance to obtain alternative products in substitution, where possible.

## 2. **PRICES:**

- (a) Prices are quoted in the currency stated in the purchase order.

Except as specified by the Purchaser in the relevant purchase order or otherwise agreed in writing between the Purchaser and the Seller, the prices stated in the relevant purchase order include all charges and levies, including without limitation:

- (i) all applicable taxes (including, without limitation, goods and services tax and withholding tax, if any) and duties;
- (ii) the cost of packaging of the products purchased in a manner suitable for shipment by the method specified by the Purchaser; and
- (iii) transportation charges, handling fees and insurance charges, and the Purchaser shall not be required to make any additional payment in respect of the foregoing.

- (b) The Seller may only issue invoices in respect of products comprised in a purchase order, at or after the time of delivery of the products to the Purchaser (unless otherwise agreed).

Payment periods will be computed from either the date of delivery or acceptance of the products ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of the order, whichever is the latest.

The payment date will be delayed on a day-for-day basis for any product that is delivered later than called for by the schedule on the face of the purchase order.

The expression 'delivery' in the context of this Agreement shall mean delivery of the products ordered to the custody or control of the Purchaser at a location specified by the Purchaser, together with all accompanying documents of title in respect of such products.

- (c) All products shall be labelled and packaged in accordance with the Purchaser's instructions or, if none are specified, in accordance with applicable laws and regulations, as well as good commercial practice in a manner sufficient to ensure arrival in an undamaged condition and to facilitate handling and storage.

### 3. **DELIVERY:**

- (a) Delivery of the products in accordance with the delivery schedule is a material requirement of each purchase order. Time is of the essence in fulfilling all purchase orders.
- (b) Unless otherwise specified in the relevant purchase order or by the Purchaser, all deliveries shall be made at the 'ship to' address specified in the relevant purchase order, and in accordance with the instructions specified therein, during normal business hours.
- (c) The Seller shall notify the Purchaser promptly in writing of any cause whatsoever, including but not limited to any actual or potential labour dispute which is delaying or threatening to delay the timely fulfillment of any purchase order. Such delay or threat of delay shall not excuse the Seller from proceeding with performance of the relevant purchase order in accordance with the delivery schedule specified in the relevant purchase order. The Seller shall cooperate with the Purchaser to avoid disruption to the supply of products to the Purchaser under the relevant purchase order.
- (d) The Purchaser shall be entitled to reschedule deliveries for all standard commodity parts by serving a written Reschedule Notice to the Seller and the Seller shall comply with such Reschedule Notice for all undelivered items. The Purchaser may request the rescheduling of deliveries for special and customised parts and the Seller shall use its best efforts to accommodate and comply with such rescheduling.

- (e) If for any reason, the Purchaser is unable to accept delivery of the products on or after the delivery date, the Purchaser shall give reasonable notice prior to the agreed upon delivery date and the Seller will store the products, safeguard them and take all reasonable steps to prevent their deterioration until delivery on the new delivery date specified by the Purchaser.
- (f) It is the Seller's responsibility to furnish the quantity specified in the relevant purchase order or in any purchase order release issued in connection therewith. The Seller shall not make partial deliveries under a purchase order unless authorised by the Purchaser in writing in advance. In any event, any additional costs incurred in such partial deliveries shall be at the expense of the Seller, unless such partial deliveries are requested for by the Purchaser in writing. The Purchaser reserves the right to return excess shipments at the Seller's expense.
- (g) If the Seller's delivery of the products is not made in the quantities and at the times or otherwise specified in the relevant purchase order or authorised in shipment releases issued by the Purchaser to the Seller, or if any products are damaged in transit (including any damage arising in connection with the loading and unloading of products) or otherwise received in a damaged state, the Purchaser reserves the right without liability and in addition to any other rights and remedies, at its sole and absolute discretion, to:
  - (i) require the Seller to deliver sufficient products which correspond to the relevant purchase order to comply with the quantities required, (or replace free of charge such products so damaged, as the case may be), and/or cancel the purchase order in whole or in part (and the Seller shall promptly collect any products which have been delivered and comprised in such purchase order (or part thereof) so cancelled) and/or accept the quantities of the products tendered and/or procure substitute products and/or approve a revised delivery date (such approval to be in writing signed by an authorised representative of the Purchaser); and
  - (ii) require the Seller to bear any freight charges and loss incurred including, lost profits and special damages.

Without prejudice to the generality of the foregoing, if a tender of conforming products is not made by the delivery date specified in the relevant purchase order or authorised in shipment releases issued by the Purchaser to the Seller, this shall constitute a breach by the Seller and the Seller shall have no right to make a later tender of conforming products unless the approval in writing signed by an authorised representative of the Purchaser has been obtained. The Purchaser will not be obliged to accept any tender of products which does not fully comply with all the provisions of the relevant purchase order.

- (h) The Seller shall not, at any time, make any material commitment(s) or production arrangement(s) in excess of the amount or in advance of the time necessary to meet the Purchaser's delivery schedule. It is the Seller's responsibility to comply

with the delivery schedule as set out in the relevant purchase order but not to anticipate the Purchaser's requirements.

- (i) The Purchaser shall have the right to reject any products which are tendered by the Seller in advance of the date scheduled for delivery and return the same to the Seller at the Seller's expense and/or to accept early delivery of products and place such products in storage at the Seller's expense until the scheduled delivery date.
- (j) The Purchaser reserves the right to withhold payment on products shipped in advance until the date of payment agreed to between the Seller and the Purchaser pursuant to Clause 2(b) hereof.
- (k) The Seller may not change the lead times for any products without giving the Purchaser prior notice in writing equivalent to the duration of the new lead time for ordering of the products. If the Seller does not give sufficient notice of the change in lead time to the Purchaser, the Seller is still bound to accept purchase orders for the products where such purchase orders are made within the original lead time.
- (l) Notwithstanding the Seller's obligations under this Agreement, in the event that the Seller is unable, for any reason, to fulfill in a timely manner the purchase order of the Purchaser and those of the Seller's other customers, due to a shortage of components or any other reason, the Seller shall ensure that the Purchaser has priority of supply.

#### 4. **REJECTION:**

- (a) (i) Payment for and/or inspection of any products under any purchase order shall not constitute acceptance thereof or waiver of any breach by the Seller under this Agreement, including failure to conform to specifications or for breach of warranty, express or implied, delays in delivery or discrepancies in quality, any articles, product or materials not in conformity with specifications (or commercial standards if specifications are not set forth). The Purchaser reserves the right to inspect all products purchased hereunder at the Purchaser's discretion and at the Purchaser's option and to reject products which are found or alleged to be defective or which the Purchaser has reasonable grounds to believe to be defective in design, material or workmanship, or otherwise not in conformity with the relevant purchase order, samples, including drawings, specifications and/or quality standards ("**non-conforming products**") or revoke acceptance of non-conforming products, without liability and in addition to any other rights and remedies.
- (ii) At the Purchaser's option and at the Seller's risk and expense, the Purchaser may return non-conforming products to the Seller, require the Seller to grant a full refund or credit to the Purchaser for non-conforming products, hold non-conforming products for disposition by the Seller or repair or rework non-conforming products to detect and correct non-conformities or replace the products with products conforming in all

respects to the relevant purchase order, all at the cost and expense of the Seller. If the Seller refuses or fails promptly to correct or replace such items when requested by the Purchaser, the Purchaser may itself, or through any agent or subcontractor, or otherwise, correct or replace such items and the Seller agrees to reimburse the Purchaser for the costs incurred thereby.

- (b) In the event of any non-conforming products, the Seller shall, within ten (10) days from notice thereof by the Purchaser, submit a written corrective action report to the Purchaser. Such report shall identify the root cause of the non-conformance, identity of affected products, and a corrective action plan, for the Purchaser's review and approval.
- (c) The Purchaser shall not be liable for failure to accept any part of the products purchased hereunder if such failure is the result of any cause beyond the control of the Purchaser including without limitation, fires, floods, acts of God, strikes, differences with employees, casualties, delays in transportation, inability to obtain necessary materials, utility services for machinery, or total or partial shutdown of the Purchaser's facilities for any cause. Acceptance of any part of the products ordered hereunder shall not bind the Purchaser to accept future shipments or waive its right to revoke acceptance of products previously delivered.
- (d) The signature of any employee or representative of the Purchaser, given on any delivery note, or other documentation, presented for signature in connection with delivery of the products, is evidence only of the quantity of products received. In particular, it is no evidence that the correct quantity or number of products has been delivered or that the products are in good condition or of the correct quality or otherwise are not non-conforming products.
- (e) Without prejudice and in addition to Clause 4(a) above, if the Seller does not inspect and confirm in writing to the Purchaser, within ten (10) days of a notice issued by the Purchaser of non-conforming products (or such other period as may be agreed in writing between the Seller and the Purchaser), that the Seller will accept the non-conforming products which the Purchaser is returning pursuant to Clause 4(a) or the Seller does not collect such non-conforming products within twenty (20) days of such notice by the Purchaser, the Purchaser may dispose of such non-conforming products in any manner, whether as scrap or otherwise, and without being accountable to the Seller for the proceeds or otherwise.

## 5. **PURCHASER'S PROPERTY:**

- (a) Unless otherwise expressly provided in this Agreement, all Special Property (hereinafter defined), and all tangible and intangible property furnished by the Purchaser to the Seller, or based on or derived from the Purchaser's confidential or otherwise proprietary information, or produced or purchased by the Seller at the Purchaser's expense, for use in the Seller's performance hereunder, and any replacement thereof, is and shall remain the exclusive property of the Purchaser. For purposes of this Agreement, "**Special Property**" includes without limitation, any design pattern, mould, tool, die, jig, fixture, drawing, or other machine or

equipment furnished or paid for by the Purchaser in connection with a purchase order.

- (b) All such Special Property is to be kept in good repair and delivered to the Purchaser upon request, and shall not be used in the manufacture of any article for anyone other than the Purchaser.
- (c) Special Property acquired specially for performance of a purchase order and the cost of which or for which the Purchaser is to pay the Seller as a separate item as indicated on the face of the relevant purchase order, shall upon such payment, become the property of the Purchaser.
- (d) Further, all drawings, specifications, technical data or other information furnished by the Purchaser hereunder shall remain the property of the Purchaser and shall not be disclosed by the Seller to others or used for any purpose other than fulfilling the relevant purchase order.

6. **CHANGES:**

- (a) The Purchaser may, at any time, by written notice to the Seller, make changes in any one or more of the following:
  - (i) drawings, designs, specifications of the products ordered, where the products to be furnished are to be specially manufactured for the Purchaser in accordance therewith;
  - (ii) the method of shipment, labeling or packing; or
  - (iii) the place, time or method of inspection, delivery, or acceptance.
- (b) If any such change affects the Seller's cost and/or delivery schedule, the Seller shall notify the Purchaser immediately, and, in the case of an increase in the Seller's cost, within ten (10) days of such notice, the Seller shall submit a detailed cost break-down comparing original requirements and costs to the changed requirements and costs. The parties will then discuss an equitable adjustment in the price or delivery schedule or both and this order shall be modified accordingly. However, no adjustment will be binding on the Purchaser unless evidenced by a purchase order, change notice or revision to the relevant purchase order signed by an authorised representative of the Purchaser.
- (c) Nothing in this Clause shall excuse the Seller from proceeding with performance of the purchase order as changed. Without prejudice to the generality of the foregoing, any changes in the product specifications and in the quantity of products ordered shall not entitle the Seller to change the delivery schedule unless agreed between the parties in writing. Notwithstanding the above or any other provision of the relevant purchase order, the Seller hereby agrees that no changes to the products that may be required in the purchase order to meet the specified

performance required of the purchase order shall entitle the Seller to any adjustment in either price or delivery unless otherwise agreed.

**7. ASSIGNMENT/NOVATION:**

- (a) The obligations of the Seller under this Agreement may not be assigned or subcontracted in whole or in part nor may any assignment of any money due or to become due hereunder be made by the Seller without the prior written consent of the Purchaser and any such assignment shall be null and void for all purposes.
- (b) Without prejudice to any other provision of this Agreement, the Seller shall (upon the request of the Purchaser) promptly execute such documents and take such other steps as may be required by the Purchaser to give effect to an assignment or a novation of that part of the contract between the Purchaser or the Purchaser's affiliates, related corporations, successors or assigns and their respective direct or indirect customer(s) in respect of or pertaining to the products or any component parts thereof or this Agreement and the relevant purchase order(s) to the direct or indirect customer(s) of the Purchaser or the Purchaser's affiliates, related corporations, successors and/or assignees, on terms acceptable to the Purchaser, including without limitation, the release and discharge of the Purchaser from all liabilities in respect thereof and/or hereof.
- (c) The obligations in this Clause shall survive the completion of performance of the purchase order(s) and the expiry or termination of this Agreement.

**8. SET-OFF:**

- (a) The Purchaser shall be entitled at all times to set-off any amount owed to the Purchaser and/or any of Purchaser's affiliated companies by the Seller against any amount payable by the Purchaser and/or any of Purchaser's affiliated companies to Seller.
- (b) The Purchaser shall be entitled at all times to set-off any amount owed to Purchaser by Seller and/or any of Seller's affiliated companies against any amount payable by Purchaser to Seller and/or any of Seller's affiliated companies.
- (c) The Purchaser shall be entitled at all times to set-off any amount owed to Purchaser and/or any of Purchaser's affiliated companies by any of Seller's affiliated companies against any amount payable to Seller by Purchaser. For this purpose, Seller represents that Seller is authorized by its affiliated companies to consent and has given its consent for and on behalf such affiliated companies to such set-off.
- (d) Affiliated company shall mean and also include related company, holding company, associated company and subsidiary company.
- (e) In the event any one or more of the subclauses or any part of the subclauses in this Clause 8 is held to be invalid or unenforceable under any statute, regulation,

ordinance, executive order or other rule of law, such or part of such subclause(s) shall be deleted and the remaining subclause(s) or part of the subclause(s) shall remain in full force and effect.

**9. COMPLIANCE WITH LAWS:**

The Seller shall comply with, all applicable laws, orders, industry standards, rules and regulations affecting its performance of this Agreement.

**10. INFORMATION DISCLOSED TO PURCHASER:**

Any knowledge or information which the Seller has disclosed or may hereafter disclose to the Purchaser, in connection with purchases hereunder, shall be deemed not to be confidential or proprietary information, and shall be acquired free from any restrictions as to use thereof as part of the consideration for the relevant purchase orders.

**11. INFORMATION DISCLOSED TO SELLER:**

All specifications, drawings, technical and/or business information, data, designs and samples furnished by the Purchaser to the Seller in connection with the purchase of the products or services covered the relevant purchase order (hereinafter collectively called "**Purchaser's Property**") which expression shall also include all the items mentioned in Clause 5 hereof), whether before or after the date of the relevant purchase order, shall remain the property of Purchaser and will be maintained in confidence by the Seller. The Seller shall not disclose or release to any third party any Purchaser's Property received or obtained in the course of this Agreement nor use any Purchaser's Property for any purpose other than the performance of its obligations under this Agreement and the relevant purchase order, without obtaining the prior written consent of the Purchaser, except for:

- (a) information which was at the time of disclosure, or thereafter falls, in the public domain without wilfulness or misconduct of the Seller; and
- (b) information which the Seller is required to disclose by law, order of court, or by the rules or regulations of any relevant regulatory or governing body with jurisdiction over the Seller. The obligations in this Clause shall survive the completion of the performance of the purchase order(s) and the expiry or termination of this Agreement.

**12. INTELLECTUAL PROPERTY:**

- (a) For the purposes of this Clause 12, "Intellectual Property Rights" shall include, without limitation, any patent, copyright, moral right, design right, trade mark and service mark (whether registered or unregistered), trade dress, get-up, trade name, goodwill, geographical indication, plant variety right, integrated circuit layout-design right, know-how, confidential information, trade secret, any application (whether pending, in process or issued) or right to apply for any of the foregoing, and any other industrial, intellectual property or protected right similar to

the foregoing (whether registered, registrable or unregistered) in any country and in any form, media, or technology now known or later developed, and any accrued or future rights and causes of action in respect of any infringement of any of the foregoing.

(b) The Seller warrants that:

- (i) it is the legal and beneficial owner of the Intellectual Property Rights in the products and/or their components thereof, and/or that in relation to the products and/or components of which it is not the legal and beneficial owner, it has obtained from the owners of the Intellectual Property Rights in such products and/or components, all licences, clearances, waivers and other approvals or consents in respect of the Seller's dealings (commercial or otherwise) with the products and their components under this Agreement, and the subsequent possession, use and/or dealings (commercial or otherwise) by the Purchaser or the Purchaser Entities (hereafter defined) thereof;
- (ii) the products and their components thereof are original and genuine goods, and are not counterfeit or imitation goods;
- (iii) the products and their components thereof do not infringe any third party's Intellectual Property Rights; and
- (iv) the products and their components thereof are not manufactured in a manner which would infringe any third party's Intellectual Property Rights.

(c) The Seller shall indemnify and keep the Purchaser and the Purchaser Entities (hereafter defined) fully and effectively indemnified on demand against any and all losses, damages, actions, costs (including legal/attorney fees on a full indemnity basis), charges, expenses, demands or liabilities of whatsoever nature, whether direct or indirect, arising out of the breach by the Seller of any of the warranties set out in Clause 12(b) and/or out of any claim by any third party alleging infringement of Intellectual Property Rights and/or that the products and/or their components thereof are counterfeit or imitation goods, whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

(d) Without prejudice to the Purchaser's or any of the Purchaser Entities' right to defend a third party's claim alleging any infringement of Intellectual Property Rights and/or that the products and/or their components thereof are counterfeit or imitation goods, the Seller shall, if requested by the Purchaser and of any of the Purchaser Entities and at the Seller's own expense, conduct the defence of such a claim by a third party. The Seller shall observe the Purchaser's and of any of the Purchaser Entities' directions relating in any way to that defence or to negotiations for settlement of the claim, and shall not at any time admit liability or otherwise attempt to settle the claim subject to the Seller providing to the Purchaser's and of any of the Purchaser Entities' reasonable satisfaction security for any costs or

liabilities that the Purchaser and of any of the Purchaser Entities may incur by reason of the Seller's conduct of such defence. The Purchaser and/or any of the Purchaser Entities shall be entitled at all times to take back the conduct of the defence if the Purchaser and of any of the Purchaser Entities does not believe that the Seller is conducting the same competently.

- (e) Without limiting the generality of the foregoing sub-clauses and without prejudice to other remedies available to the Purchaser under this Agreement, if it is determined by any independent tribunal of fact or law or if it is agreed between the parties to the dispute or if it is determined by the Purchaser in its sole and absolute discretion that an infringement of Intellectual Property Rights of a third party has occurred, the Seller shall, at the Purchaser's option and the Seller's sole expense:
  - (i) procure for the Purchaser and/or the Purchaser Entities the right to continue the use and/or possession of the products;
  - (ii) replace the products with non-infringing products;
  - (iii) alter or modify the products in order to avoid continuing infringement without reducing or adversely affecting the functionality or performance thereof; or
  - (iv) recall the products and refund the purchase price of the products to the Purchaser.
- (f) The obligations in this Clause shall survive the completion of performance of the purchase order(s) and the expiry or termination of this Agreement.

### 13. **RESTRICTED USE:**

- (a) The Seller further agrees that in consideration of its receipt from the Purchaser hereunder of the Purchaser's Property, the Seller shall not at any time:-
  - (i) engage either directly or indirectly (whether as principal, agent or otherwise) in the sale of products utilising the Purchaser's Property (other than to the Purchaser or its order); or
  - (ii) register the Purchaser's Property or any part or item thereof in the Seller's name or take any other action inconsistent with, the Purchaser's propriety rights thereto.
- (b) The obligations in this Clause shall survive the completion of performance of the purchase order(s) and the expiry or termination of this Agreement.

### 14. **INDEMNIFICATION:**

- (a) The Seller shall indemnify and keep the Purchaser and the Purchaser Entities (hereinafter defined) and their respective successors, assignees, agents and any third party including, without limitation officers, employees, workers, servants,

subcontractors, customers and users of its products (collectively, the “**Indemnified Persons**”) fully and effectively indemnified on demand against all death, personal injury, damage, costs (including legal/attorney fees on a full indemnity basis), charges, expenses, demands, liabilities or losses which may result in any way from any act or omission of the Seller, its agents, employees, or subcontractors and/or arising from or relating to products delivered pursuant to any purchase order and/or any claim in respect thereof.

- (b) The Seller shall indemnify and keep the Purchaser and the Purchaser Entities (hereinafter defined) and other Indemnified Persons fully and effectively indemnified on demand from and against all losses, actions, liabilities, damages, costs (including legal/attorney fees on a full indemnity basis), expenses, charges or demands of whatsoever nature, whether direct or indirect and howsoever incurred arising from any breach of the provisions of this Agreement, including without limitation:
  - (i) the obligation to notify set out in Clause 1(e);
  - (ii) any delay in delivery of the products pursuant to any purchase order;
  - (iii) the obligation set out in Clause 4(b);
  - (iv) any of the warranties set out in Clause 16; and
  - (v) conducting any recall or consumer return campaigns or other corrective actions, and/or out of any claim by any third party arising out of any breach of this Agreement, whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (c) Without prejudice to the Purchaser’s or any of the Purchaser Entities’ right to defend a third party’s claim arising out of any breach by the Seller of this Agreement, the Seller shall, if requested by the Purchaser and/or any of the Purchaser Entities and at the Seller’s own expense, conduct the defence of such a claim by a third party. The Seller shall observe the Purchaser’s and/or any of the Purchaser Entities’ directions relating in any way to that defence or to negotiations for settlement of the claim, and shall not at any time admit liability or otherwise attempt to settle the claim subject to the Seller providing to the Purchaser’s and/or any of the Purchaser Entities’ reasonable satisfaction security for any costs or liabilities that the Purchaser and/or any of the Purchaser Entities may incur by reason of the Seller’s conduct of such defence. The Purchaser and/or any of the Purchaser Entities shall be entitled at all times to take back the conduct of the defence at its discretion.
- (d) The obligations in this Clause shall survive the completion of performance of the purchase order(s) and the expiry or termination of this Agreement.

15. **TERMINATION:**

- (a) If the Seller ceases to conduct operations in the normal course of business (including its inability to meet obligations as they mature), or if any proceeding under bankruptcy or insolvency laws is brought by or against the Seller, or a resolution is passed to wind up the Seller, or a receiver for the Seller is appointed or applied for, or an assignment for the benefit of its creditors is made by the Seller or if in the Purchaser's opinion the Seller's financial position shall be such as to endanger its ability to perform its obligations hereunder, the Purchaser may terminate this Agreement and any purchase order without liability except for deliveries previously made or for products covered by a purchase order then completed and subsequently delivered in accordance with the terms of the relevant purchase order and this Agreement.
- (b) This right to terminate given by this Clause shall not affect or impair any right of the Purchaser to terminate any purchase order for the Seller's default in the performance thereof or hereof nor prejudice any other right or remedy of the Purchaser in respect of any breach by the Seller.
- (c) Notwithstanding anything contained herein or in the purchase order, the Purchaser shall, upon termination as aforesaid, be entitled to purchase the products or any substitutes thereof from alternative sources and the Seller shall be liable for any loss and the amount of any additional costs incurred in the event this arises from any default or breach on the part of the Seller.

16. **WARRANTY AND UNDERTAKING:**

In addition and without prejudice to all other warranties express or implied by law:-

- (a) The Seller warrants that all products, materials or articles delivered to the Purchaser will conform to the Purchaser's purchase orders, quality standards, instructions, specifications and (if specified in writing by the Purchaser) drawings and will be free from defects, workmanship and materials and suitable for the purposes intended by the Purchaser. The Purchaser's approval of designs furnished by the Seller shall not relieve the Seller of its obligations under any provisions of this Agreement including the warranty contained in this Clause.
- (b) The Seller further warrants that the products and services furnished under the relevant purchase order shall conform to all representations, affirmations, promises, descriptions, samples or models which are a part of such purchase order. The Seller agrees that these warranties shall survive acceptance of the products. The warranties stated in this Agreement (including without limitation this Clause 16) are hereby extended to, and shall inure to the benefit of, the Purchaser and the Purchaser's affiliates, related corporations, successors, assigns and direct and indirect customers to whom the products and services provided hereunder may be sold or transferred (jointly and severally "**Purchaser Entities**"). Without prejudice to any other provision of this Agreement, the parties intend that the warranties stated in this Agreement (including without limitation this Clause 16)

shall be enforceable by the Purchaser Entities pursuant to and in accordance with the Contracts (Rights of Third Parties) Act Cap 53B of Singapore (or its equivalent under applicable law).

- (c) In the event of breach of warranty, the Purchaser shall be entitled to all rights and remedies available at law against the Seller, including but not limited to credit, replacement or repair of defective products at the Purchaser's option, costs of removal of the products from any component, assembly or system into which the products may have been incorporated, and re-installation of non-defective products, and cost of return of the products. The Seller shall also reimburse the Purchaser for any incidental and consequential damages caused by such non-conforming products including, but not limited to costs, expenses and losses incurred by the Purchaser:
  - (i) in inspecting, sorting, repairing or replacing such products;
  - (ii) resulting from any production interruptions;
  - (iii) conducting any recall or consumer return campaigns or other corrective actions; and
  - (iv) claims for personal injury or property damage.
  
- (d) The Seller warrants that the products supplied hereunder will have been produced or provided in compliance with, and the Seller will comply with, all applicable laws, orders, rules, regulations, ordinances, conventions and standards, including without limitation, those that relate to wages, hours and conditions of employment, occupational, health/safety, motor vehicle safety and environmental matters. At the Purchaser's request, the Seller shall certify in writing its compliance with the foregoing. Without prejudice to the generality of the foregoing, the Seller warrants to the Purchaser that:-
  - (i) all aerospace products comply and will comply with the requirements as set out in Appendix A;
  - (ii) all printed circuit boards ("PCBs") comply and will comply with the requirements as set out in Appendix B,
  - (iii) all the RoHS parts delivered to the Purchaser comply and will comply with the requirements as set out in Appendix C;
  - (iv) all products requiring Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) registration and certification have been so registered or certified; and
  - (v) the products will comply with any additional warranties which are specified in the relevant purchase order.

- (e) The Seller warrants that it:
- (i) holds full clear and unencumbered title in and to all of the products,
  - (ii) will on the date of delivery of the products hold full clear and unencumbered title in and to all of the products; and
  - (iii) will on the date of delivery have the full and unrestricted right power and authority to sell transfer and deliver all of the products to the Purchaser hereunder whereupon the Purchaser will acquire valid and unencumbered title thereto.
- (f) The Seller further undertakes:
- (i) to notify the Purchaser in writing (1) of the date of expiry of the shelf-life of all PCBs to be delivered to the Purchaser pursuant to any purchase order and/or (2) should the PCBs to be delivered to the Purchaser pursuant to any purchase order have been re-baked due to the expiry of its shelf life;
  - (ii) to keep records of all PCBs delivered to the Purchaser, including without limitation, particulars of the date of baking or re-baking (as the case may be) of such PCBs;
  - (iii) to submit to the Purchaser the following documents, in form and substance satisfactory to the Purchaser, together with the delivery orders in respect of the relevant product :-

Product Group	Outgoing Inspection/Test Report	COC (RoHS/UL etc)	Baking Report	Product/Process Change Notification (PCN)
Metal Parts		X		X
Plastic Parts		X		X
PCB	X	X	X	X
Mechanical Parts		X		X
Electronic/Electromechanical Parts				X

- (iv) to notify the Purchaser in writing of any proposed changes in product and/or process definition and to obtain the prior written approval of the Purchaser prior to shipment; and
  - (v) to procure that any sub-contractor approved by the Purchaser is apprised with and complies with all requirements of the Purchaser in relation to the products.
- (g) The Seller warrants that all electromechanical/electronics components shall be

delivered within twenty four (24) months of the date of manufacture.

- (h) The Seller shall, and shall procure of each sub-contractors who provide goods and services to be utilised in or in relation to any of the products delivered or to be delivered to the Purchaser, permit the Purchaser, the Purchaser Entities, any and all regulatory authorities and/or any of their respective representatives to examine the separate books and records relating to the products delivered or to be delivered to the Purchaser and to grant or procure the grant of the right of access to all facilities involved in the manufacture of the products delivered or to be delivered to the Purchaser.
- (i) The obligations in this Clause shall survive the completion of performance of the purchase order(s) and the expiry or termination of this Agreement.
- (j) The Seller shall preserve, retain and produce it on demand, records, information and documents related to product specifications, drawings, process requirements, inspection instructions/reports, COC (RoHS/UL), baking report, Product/Process Change Notification (PCN) and relevant technical data for seven (7) years or the lifetime of the product, as may be agreed with the Purchaser.

**17. INSURANCE:**

- (a) The Seller represents that it has and will maintain such public liability, product liability, property damage and employer's liability and compensation insurance and will protect the Indemnified Persons adequately from the risks described in Clauses 14(a) and (b) and from any claim under any law relating to workmen's compensation.
- (b) The certificates of insurance in relation to the insurance policies required to be carried or maintained under this Clause shall set forth the amount of coverage, the number of the policy and the date of expiration. Upon the Purchaser's request, the Seller shall name the Purchaser and/or the Purchaser's Entities and/or other Indemnified Persons as an additional insured on its policies. Compliance by the Seller with the insurance requirements stated in this Clause shall not in any way affect the Seller's duty to indemnify the Purchaser under Clause 14 herein.
- (c) If the relevant purchase order includes a sale of products manufactured in whole or in part to the Seller's designs or specifications, the Seller agrees to provide the Purchaser, upon request, with a current certificate of product liability insurance and a Seller's endorsement naming the Purchaser and/or the Purchaser's Entities and/or other Indemnified Persons as an additional insured on the Seller's policy.

**18. PURCHASER'S REMEDIES:**

Nothing in this Agreement shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Purchaser or the Purchaser Entities may be entitled, in relation to the products the subject of any purchase order, by virtue of any statute or custom or any general law or local law or regulation. The Purchaser's and the

Purchaser's Entities' remedies described herein shall be cumulative and in addition to any remedies allowed by law or equity.

**19. RISK OF LOSS AND PROPERTY IN THE PRODUCTS:**

Risk of loss of, or damage to, the products furnished by the Seller in fulfillment of any purchase order shall pass to the Purchaser only upon actual delivery. Notwithstanding any provision herein or in the relevant purchase order, title and property to the products will be passed to the Purchaser upon delivery thereof. Such passing of risk or title and property shall be without prejudice to any right of rejection arising under this Agreement, including without limitation, under Clause 4.

**20. WAIVERS, RIGHTS AND REMEDIES:**

No failure or delay by the Purchaser in exercising any right or remedy provided by law or under or pursuant to this Agreement (including without limitation, such rights under Clause 4) shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

**21. INDEPENDENT CONTRACTING PARTIES:**

The relationship between the Purchaser and the Seller shall be that of independent contracting parties. Nothing contained in this Agreement shall be construed as providing for the sharing of any costs, expenses, risks, or liabilities arising out of the other party's activities related to this Agreement. The Seller shall not in any manner represent that it or its employees or agents are employees or agents of the Purchaser, and nothing contained in this Agreement shall be construed as authorising the Seller to create or assume any obligation or liability in the name of the Purchaser or subject the Purchaser to any obligation or liability. This Agreement shall not constitute, create, give effect to or otherwise imply a joint venture, pooling arrangement, partnership or formal business organisation of any kind.

**22. APPLICABLE LAW:**

All matters connected with each purchase order, this Agreement and performance thereof shall be construed, interpreted, applied and governed in all respects by the laws of the country in which the Purchaser is incorporated. The Purchaser is specified in the purchase order. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (where applicable) are hereby excluded.

**23. ARBITRATION:**

Any dispute, controversy or claim arising out of or in connection with any purchase order or this Agreement, including any question regarding its existence, validity, breach or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre

("SIAC"), for the time being in force, which rules are deemed to be incorporated by reference into this Clause. The tribunal conducting the arbitration shall consist of a single arbitrator to be appointed by the Chairman of the SIAC. The language of the arbitration shall be English. The parties hereto undertake to keep the arbitration proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential. The decision and award resulting from such arbitration shall be final and binding on the parties. Judgment upon the arbitration award may be rendered by any court of competent jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order for enforcement and the parties agree to submit to the jurisdiction of such courts and to service of process for such purpose. In so far as permissible under applicable law, each of the parties hereby waives all rights to object to any action for judgment or execution which may be brought in a court of competent jurisdiction on an arbitration award or a judgment rendered thereon.

**24. SEVERABILITY:**

If any term or portion of this Agreement or the relevant purchase order is held to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term or portion shall be deemed reformed or deleted as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this Agreement or purchase order shall remain in full force and effect.

**25. CONTRACTS (RIGHT OF THIRD PARTIES) ACT:**

Save for the Purchaser Entities and the Indemnified Persons, a person who or which is not a party to this Agreement shall not have any right under the Contracts (Rights of Third Parties) Act, Chapter 53B (or its equivalent under applicable law) to enforce or enjoy any provision of this Agreement and notwithstanding any term of this Agreement, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Agreement.

## APPENDIX A

### AEROSPACE PRODUCTS REQUIREMENTS

1. All aerospace products must comply with the SAE AS9100, which states that purchasing information shall describe the product to be purchased, including where appropriate:-
  - (a) Requirements relative to:-
    - (i) Seller's notification to the Purchaser of non-conforming product; and
    - (ii) arrangements for the Purchaser's approval of the Seller's non-conforming material;
  - (b) Requirements for the Seller to notify the Purchaser of changes in product and/or process definition and, where required, to obtain the Purchaser's approval. The Supplier Process Change Request (SPCR) form shall be completed and approved prior to shipment for mechanical and PCB commodity;
  - (c) Rights of access by the Purchaser, Purchaser Entities and regulatory authorities to all facilities involved in the purchase order and to all applicable records; and
  - (d) Requirements for the Seller to flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required; and
2. All aerospace products should be delivered to the Purchaser within twenty four (24) months of their date of manufacture.

## APPENDIX B

### **PCB REQUIREMENTS**

For PCB with HASL or Leadfree HASL or ENIG surface finishing, any PCB stored for three (3) months or more are to be baked before shipping to the Purchaser.

All PCBs to be delivered to the Purchaser within twelve (12) months of the manufacture date code.

The PCB solderability warranty from PCB suppliers are as follows:

HASL	:	twelve (12) months from manufacture date code
Leadfree HASL	:	twelve (12) months from manufacture date code
ENIG (immersion gold)	:	twelve (12) months from manufacture date code
Immersion Silver	:	six (6) months from manufacture date code
Immersion Tin	:	three (3) months from manufacture date code
OSP	:	twelve (12) months from manufacture date code

Within the warranty period, the Seller shall compensate the Purchaser in full for any claims in connection with failed PCBA's that have been populated by the Purchaser. Seller is encouraged to verify the failure on-site at the Purchaser's premise. For special cases, one sample of the failed PCBA may be sent to Seller for verification upon request and at Seller's cost.

For Tg 170°C minimum FR4 PCB and non-FR4 material PCB, Seller is required to pack the PCB in moisture barrier bag (MBB) before shipping.

## APPENDIX C

### **RoHS REQUIREMENTS**

1. All **RoHS** parts delivered to the Purchaser are to be clearly marked and identified to differentiate them from non-**RoHS** parts.
2. A certificate of compliance detailing that the **RoHS** parts do not contain prohibited substances is to accompany the deliveries of all products with **RoHS** parts.
3. All **RoHS** parts should be delivered to the Purchaser within twenty-four (24) months of their date of manufacture.