

# Terms e Conditions of Sale (US Client)

Any supply or provision of Products and/or Services (as defined below) by the member of the Mexichem group indicated on the Purchase Order (as defined below) ("Seller") to the person, or company purchasing the Products and/or Services from Seller ("Customer") (each also referred to as a "Party", and collectively as the "Parties") shall be subject to these general terms and conditions of sale (the "Terms and Conditions") and shall constitute the complete and exclusive agreement between Seller and Customer. Any prior agreements entered into by and between the Parties are superseded by the Agreement (as defined below) and any additional or different terms proposed by Customer (including any general terms and conditions of purchase by Customer) which Customer seeks to impose or incorporate are expressly rejected, regardless of whether Customer refers to such terms in a request for quotation, other communication to Seller or otherwise, and shall not be binding on Seller unless expressly accepted in writing by Seller's authorized representative with specific reference to such term.

## GENERAL CONSIDERATIONS

### 1. DEFINITIONS

**1.1. In this Terms and Conditions**, the following words and phrases shall have the following meanings:

**Agreement:** means the Purchase Order as a whole and these Terms and Conditions.

**Applicable Law:** means any law, statute, order, decree, rule, injunction, license, permit, permission, consent, approval, agreement, regulation, interpretation, treaty, judgment or legislative or administrative action of a competent governmental authority, which applies to the supply or provision of Products and/or Services.

**Customer:** has the meaning given to it in the introduction.

**Prefabricated Products:** means any Product prefabricated or assembled in accordance with a specification provided by the Customer.

**Products:** means goods, materials and other physical items that Seller has agreed to supply to Customer under the Agreement.

**Purchase Order:** means Customer's order for the Products or Services submitted in accordance with clause 2 hereof.

**Seller:** has the meaning given to it in the Introduction.

**Services:** means the services (including digital services) which the Seller has agreed to perform for the Customer under the Agreement.

**Terms and Conditions** has the meaning given to it in the introduction.

1.2. INTERPRETATION, In the Agreement,

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(a) A reference to a person includes a natural person or a legal person (whether or not having separate legal personality).

(b) A reference to a party includes its successors

and permitted assigns.

(c) A reference to legislation or a statutory provision is a reference to it as amended or restated. A reference to legislation or a statutory provision includes all concordant legislation made pursuant to such legislation or statutory provision.

(d) Any words included in terms such as: include, in particular, for example, or any similar expression, shall be construed as illustrative and shall not limit the meaning of the words, description, definition, phrase or term preceding such terms.

(e) A reference to writing, or in writing, includes facsimile and electronic mail.

(f) The introduction shall form part of these Terms and Conditions.

**1.3.** In the event of any conflict between a term in a Purchase Order and these Terms and Conditions, the terms in the Purchase Order shall prevail and supersede these Terms and Conditions in that regard. In the event of any conflict between a translated term in a Purchase Order or these Terms and Conditions and the English equivalent, the English equivalent shall prevail.

### 2. PURCHASE ORDERS

**2.1. Terms.** These Terms and Conditions apply to each Purchase Order. Any additional or different terms proposed by Customer (including Customer's general terms and conditions of purchase) which Customer seeks to impose or incorporate are expressly rejected, regardless of whether Customer refers to such terms in a request for quotation, other communication to Seller or otherwise, and shall not be binding on Seller unless expressly accepted by Seller's authorized representative, in writing, with specific reference to this clause.

**2.2. Purchase Orders.** Customer may submit Purchase Orders for Products and Services to the Seller. Each Purchase Order shall be deemed to be a separate offer by Customer to purchase

Products or Services on the terms of this Agreement, which Seller shall be entitled to accept or reject at its discretion – also if a quotation from Seller is followed by a Purchase Order from Customer.

**2.2.1.** A Purchase Order shall only be agreed, and an Agreement shall only be formed, upon the occurrence of the earlier of (a) Seller confirming a Purchase Order issued by the Customer in writing, or (b) Seller starting the execution of such Purchase Order. Without prejudice to the foregoing, the Seller may require the Customer to order a minimum quantity or order value of Products per Purchase Order.

**2.3. Amendments and Non-Cancellable or Non-Refundable Details.** Purchase Orders may not be modified, cancelled or rescheduled without Seller's prior written consent.

**2.3.1.** All Purchase Orders must be in writing and must identify the Products and Services, unit quantities, part numbers, applicable prices and requested delivery dates of the Products or Services being purchased.

**2.3.2.** Seller may designate certain Products and Services as non-cancelable and non-returnable ("NCNR") at its discretion, and the sale of such Products shall be subject to the special terms and conditions contained in Seller's confirmation of a Purchase Order or NCNR letter (as applicable), which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

**2.3.3.** Unless the Customer immediately rejects any of these special terms and conditions, they shall be deemed accepted. (Note: Purchase Orders for Pre-Fabricated Products are neither cancellable nor refundable under any circumstances, unless they present latent defects that render them unsuitable for their intended use or diminish their value).

### 3. PRICES

**3.1. Prices.** The price of the Products and/or Services are the prices set out in the Agreement or, if no price is set out in the Agreement, the price set out in the Seller's published price list in force on the date of the Purchase Order.

**3.1.1.** The Customer shall pay in addition the amounts set out in the Agreement (including those referred to in clause 5.1 and 11 of these Terms and Conditions). If, after the conclusion of the Agreement, there is, for example, a change in raw material prices, labor or manufacturing costs, exchange rate fluctuations, increases in taxes, wages, levies, premiums of any kind, whether or not imposed by the government, the Seller shall be entitled to modify the agreed price unilaterally.

**3.1.2.** If this right is exercised and the Seller wishes to increase the agreed price within three months after the conclusion of the Agreement, the Customer shall have two (2) weeks to

terminate the Agreement. The Customer shall not be entitled to claim any compensation from the Seller for this reason. Price quotations shall automatically expire thirty (30) days after the date of issue, or as otherwise stated in the quotation.

**3.1.3.** Customer agrees that Seller may charge a handling fee for Purchase Orders below a minimum quantity or minimum order value, which will be included in the Purchase Order. Seller reserves the right to charge a handling fee for Purchase Orders that are requested to be shipped prior to agreed or published delivery times.

**3.2. Additional Pricing Obligations.** The price of an Agreement includes and is subject to the understanding that, the supply by Seller of any Products and/or Services under such Agreement to Customer, is not subject to any direct or indirect obligations imposed on Seller and/or any compensation mechanism or industry participation or any other event which results directly or indirectly in an increase in the cost price of the Products and/or Services ("Additional Price Obligations").

**3.2.1.** In the event that Additional Price Obligations are imposed, the prices and terms and conditions in the Agreement shall be subject to revision and Seller reserves the right to renegotiate the prices and terms and conditions in the Agreement with Customer.

**3.2.2.** Seller has no obligation to supply Products and/or Services to Customer under an Agreement if the Parties do not reach further agreement on revised prices, terms and conditions due to the Additional Price Obligations imposed.

### 4. PAYMENT TERMS

**4.1. Payment Due Date.** Seller may invoice Customer for the Goods and Services prior to, during or at any time after completion of delivery. Payment shall be due no later than 30 (thirty) calendar days after the date of invoice, unless a different time period is specified on the invoice or communicated to Customer in writing.

**4.1.1.** Partial shipments may be invoiced separately.

**4.1.2.** Seller may send invoices electronically and is not required to provide a hard copy of the invoice.

**4.2. Currency of Invoice, Correction and Payment.** Payments must be made in the currency specified on the invoice or as set forth in the Agreement and must be made in full and in cleared funds by electronic funds transfer to a bank account designated in writing by Seller.

**4.2.1.** Unless otherwise agreed in writing by Seller, payment by credit card is not permitted.

**4.2.2.** If Seller establishes a payment gateway, Customer shall pay Seller through such payment gateway, if so directed by Seller.

**4.2.3.** Any disputes regarding invoices shall be governed by the principle of good faith and must be supported by detailed supplementary information.

**4.2.4.** Seller reserves the right to correct any inaccurate invoice. Any corrected invoice must be paid by the due date for payment of the original invoice or the payment deadline included in the corrected invoice, whichever is later.

**4.2.5.** Customer must pay the undisputed amount of the invoice by the due date for payment of the original invoice, or the payment deadline included in the corrected invoice, whichever is later. In the event there is an overpayment, the amount overpaid will be offset against future invoices issued and accepted by Seller or otherwise refunded on terms determined by Seller.

**4.2.6.** All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of taxes as required by Applicable Law).

**4.3. Late Payment.** If Customer fails to timely meet its payment obligations to Seller or any of Seller's Affiliates for any undisputed amounts, regardless of whether set forth in the Agreement or any other contract with Seller or any of Seller's Affiliates, Seller may, at Seller's sole discretion and until all outstanding amounts and late payment charges, if any, have been paid:

- (1) be relieved of its obligations with respect to conventional warranties, including, without limitation, delivery schedules, support for the provision of spare parts and delivery schedules under any contract (including the Agreement);
- (2) refuse to process any credit to which Customer may be entitled under any contract (including the Agreement);
- (3) set off any credit or sum due from Seller or any of Seller's affiliates to Customer against any undisputed amounts due from Customer to Seller or any of Seller's affiliates, including, without limitation, amounts due under any contract (including the Agreement) between the Parties or with Seller's affiliates;
- (4) withhold performance and future shipments to Customer to which Seller or any of Seller's affiliates are obligated under any contract (including the Agreement);
- (5) declare Customer in default and terminate the Agreement and any other contract with Seller or any of its affiliates;
- (6) recover Products for which payment has not been made;
- (7) deliver future shipments under any contract (including the Agreement) on a cash on demand or cash in advance basis;
- (8) include late payment charges (default interest) on outstanding amounts or the maximum rate permitted by Applicable Law, for each month or portion thereof;

(9) charge storage or inventory holding fees on Products;

(10) recover all costs of collection, including but not limited to reasonable attorneys' fees;

(11) if Customer fails to pay according to a payment schedule, accelerate all remaining payments and declare the entire outstanding balance then due and payable;

(12) implement that any turnover bonus or discount scheme is only due and payable after Customer has fulfilled all of its obligations to Seller;

(13) require Customer to pay court and out-of-court costs incurred by Seller, which shall amount to not less than the equivalent of 15% of the outstanding sum; and

(14) combine any of the foregoing rights and remedies as permitted by Applicable Law.

**4.3.1.** The foregoing remedies are in addition to all other remedies available at law.

## 5. DELIVERY TERMS

**5.1. Terms of Delivery.** The Parties shall agree in the Purchase Order on the terms of delivery, including the method of delivery. Unless otherwise agreed in the Purchase Order, the terms of delivery are EX Works (Incoterms 2020) to Seller's designated facility.

**5.1.1.** Unless otherwise agreed in writing by the Parties, Customer is responsible for the costs and arrangement of all insurance, transportation, loading and unloading of the Products at the place of delivery, duties, taxes and for completing all export clearance documents.

**5.1.2.** The Customer is responsible for all transportation, duties, taxes and other charges to enable import clearance.

**5.1.3.** The Customer shall pay all transportation costs (including insurance, duties and taxes) and shall bear the cost of any claims made against the carrier.

**5.1.4.** When Customer arranges export shipment, Customer shall provide Seller with evidence of export acceptable to the relevant tax and customs authorities.

**5.1.5.** The cost of disposable packaging shall be considered included in the price. The cost of reusable packaging is not included in the price and will be charged separately.

**5.2. Shipping.** Unless Seller agrees in writing to a different delivery date, Seller will schedule delivery in accordance with its published delivery schedule.

**5.2.1.** All shipping and delivery dates are approximate and are based on current availability of material, including raw material, existing production schedules and prompt receipt of all necessary information.

**5.2.2.** Time of delivery shall not be of the essence. Seller shall not be liable for any damage, loss, failure or expense arising from delays in shipment, even when caused by Force Majeure or Customer's failure to provide Seller with adequate delivery instructions or any other instructions relevant to the supply of the Products or Services.

**5.2.3.** Each Purchase Order shall be deemed fulfilled upon shipment of the respective specified quantity. Unless otherwise agreed, all Products shall be shipped within the time period stated in the Purchase Order accepted by the Seller.

**5.2.4.** Seller may, in its sole discretion, partially fulfill a Purchase Order and allocate Products among its customers.

**5.2.5.** Seller delivers the quantities of Products ordered within the limits of the standard package quantities used by Seller from time to time.

**5.2.6.** If the Parties have agreed in writing that the Seller shall delivery the Products on a site of works, then the Customer ensure that the Products can be delivered at a point on a good hard ground nearest to the site and the Seller may refuse to unload the Products to sites considered in the discretion of the driver to be unsuitable (provided that such refusal shall still constitute delivery of the Products in accordance with the Agreement).

**5.3. Completion of Delivery.** Unless otherwise agreed in writing by the Parties, Customer shall pick up the Products at Seller's designated premises or at such other location as Seller may direct prior to delivery, within three business days following Seller's notification to Customer that the Products are ready.

**5.3.1.** Delivery is complete when the Products are delivered in accordance with the agreed Incoterm or Customer has provided Seller with a duly executed proof of delivery, whichever is earlier.

**5.3.2.** Seller shall not be required to tender delivery of any quantity of Products for which Customer has not provided timely shipping instructions.

**5.3.3.** If Customer fails to perform an obligation to Seller, including providing proof of delivery, or gives Seller good reason to assume that Customer will not perform such obligations, Seller shall be entitled to recover the Products delivered subject to the reservation of title, or cause this to be done, even if they are to be separated from other products, or assess any additional taxes that may be applicable to the specific transaction.

**5.3.4.** The costs of recovery shall be borne by the Customer, without prejudice to any other rights that may be invoked by the Seller.

**5.3.5.** In addition, if Customer fails to accept delivery of the Goods or fails to make arrangements to accept delivery of the Products or if Customer delays delivery or Seller is unable to deliver due to inadequate access or instructions

or if Customer fails to obtain instructions, consents or licenses, delivery shall be deemed to have occurred and Seller may take one or more of the following actions (without prejudice to any other rights or remedies Seller may assert):

- a) charge additional charges for the failed delivery;
- b) assign new delivery dates;
- c) store the Goods in accordance with clause 9;
- d) invoice the Customer for the Goods;
- e) terminate the Agreement without liability on the part of the Seller; and
- f) recover from the Customer all costs and losses incurred by the Seller.

**5.4. Ownership and Risk of Loss.** Ownership of the Products shall not pass to Customer until Seller receives payment in full (in cash or cleared funds) for the Products and any other products that Seller has supplied to Customer in respect of which payment is due. Until ownership of the Products has passed to Customer, Customer shall (i) store the Products separately from all other property held by Customer so that they remain readily identifiable as Seller's property; (ii) maintain the Products in satisfactory condition and insured against all risks for their full price from the date of delivery.

**5.4.1.** Customer may resell or use the Products in the ordinary course of its business (but not otherwise) prior to Seller's receipt of payment for the Products. However, if Customer resells the Products prior to that time, Customer does so as principal and not as agent for Seller and ownership of the Products shall pass from Seller to Customer immediately prior to the time of resale by Customer.

**5.4.2.** Risk of loss shall pass to Customer upon delivery in accordance with clause 5.1, except for export shipments, in which case risk of loss shall pass to Customer upon transfer of ownership.

## 6. RETURNS, REFUNDS AND EXCHANGES

**6.1. Returns.** Only Products originally shipped by Seller, or an authorized supplier (drop shipment) will be considered for return to Seller.

**6.1.1.** Returns must be requested within 30 days of the date of shipment unless Seller agrees to a longer period in writing.

**6.1.2.** When a customer requests the return of Products to Seller, Customer certifies that the Products were purchased from Seller and that there has been no substitution of the Product by another supplier, distributor or other source of the Product. Any returns must be in the original packaging, unused and in a condition no worse than delivered to Customer, except if approved for failure analysis/warranty evaluation by a Seller's sales representative through a Return Material Authorization (RMA) or equivalent

applicable process.

**6.1.3.** Prefabricated Products cannot be returned or exchanged. Customer shall return all reusable packaging to Seller in accordance with instructions provided from time to time by Seller, at Customer's expense. The Customer shall return all reusable packaging to the Seller periodically, in accordance with the Seller's instructions, with the Customer bearing the costs.

**6.1.4.** The Customer shall return all reusable packaging to the Seller periodically, in accordance with the Seller's instructions, with the Customer bearing the costs.

**6.2. Exchanges.** Any item to be exchanged must be in its original packaging, unused and in a condition no worse than delivered to Customer.

**6.2.1.** Exchanges must be requested within 30 days of the date of shipment, unless Seller agrees to a longer period in writing.

**6.2.2.** Defective items may be exchanged for the same item.

**6.2.3.** Items purchased from Seller that have been used or altered and any items that have been sold as NC/NR will not be accepted for exchange, which shall include Prefabricated Products.

**6.3. Return/Restocking Charge.** Seller reserves the right to charge cancellation and restocking fees, at a minimum rate of 15%, to be deducted from Customer's refund.

**6.3.1.** Seller does not reimburse (costs for) original shipping and handling.

**6.3.2.** Customer is responsible for all return shipping charges, subject to applicable legal exceptions.

**6.3.3.** Seller does not accept C.O.D. shipments.

## 7. PRODUCTS, SERVICES AND WARRANTY

**7.1. Products and Services.** Seller's Products are described in Seller's product catalog (as amended from time to time). Seller shall have the right to terminate the manufacture or offering of any Products or Services, or to modify the specification of the Products or Services at any time and at its discretion, provided that Seller shall continue to provide any Products or Services as agreed to in a Purchase Order.

**7.2. Warranty.** Seller's Products are warranted to be free from defects in material and workmanship for a period of 12 (twelve) months from the date of shipment.

**7.3. Defects.** If Customer identifies a Visible Defect (as defined in Section 8.1) in a Product and informs Seller of such Visible Defect no later than seventy-two (72) hours from delivery and during the applicable warranty period set forth in Section 7.2, and Seller shall determine, in its sole discretion, whether such Product is defective, and

Seller shall, as its sole remedy, repair or replace, in its sole discretion, the defective Product or part.

**7.3.1.** Seller shall in no event be responsible for searching for and finding defective Products (e.g., opening walls to find a defective Product) and/or excavating and removing defective Products or restoring the items in which the Products were installed.

**7.4. Products Manufactured by Third Parties.** Products that may be manufactured by a third party and sold by Seller under the Agreement shall not be subject to the warranties set forth in this Agreement. To the extent the third party grants any warranty terms to Seller, Seller shall convey the same warranties to Customer, if any.

**7.5. Exclusion.** Subject to clause 7.9, the warranty referred to in clause 7.2 shall not apply to any defect that Seller determines results from:

- a) Loss or damage in transit (where transportation is not at the Seller's expense).
- b) External causes such as accident, abuse, misuse, electrical power problems or damage by animals.
- c) Unreasonable or improper storage, maintenance, handling or installation, including installation other than as recommended by Seller or by a third party.
- d) Any alterations or repairs (or attempted alterations or repairs) made by a Party other than an authorized party.
- e) Customer's acts or omissions which expose the installation area where the Products or Services ("System") are used to any environment unsuitable for the same, with the respective specifications, which include, but are not limited to, Customer's use of toxic, corrosive or caustic liquids and/or gases, exposure to severe weather conditions and water;
- f) Any defect or problem caused by any defect in any third party hardware or software used in combination with the System;
- g) Any use other than in accordance with the documentation provided by the Seller.
- h) Defect arising as a result of the Seller applying any drawing, design or specification supplied by the Customer.
- i) Normal wear and tear; and
- j) The Products differ from their description as a result of changes made to ensure that they comply with Applicable Law.7.6. Exoneração de responsabilidade.

**7.6. Disclaimer of Liability.** Seller excludes all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose and/or warranty of non-infringement. Seller shall not be liable to any party under strict liability, tort, contract or



otherwise for damages caused or alleged to be caused as a result of any design or defect in Seller's Products. Repair, replacement, partial or full refund is the sole and exclusive remedy available to Customer in the event of defective Products and the consequences thereof.

**7.7. Services.** The Services provided by the Seller do not carry any obligation to achieve a result and the Seller's liability for the Services and any inaccuracies or omissions in respect of designs, advice, dimensions given, technical data, samples, inspections, drawings, calculations, calculation advice and/or all other documentation provided by the Seller in the context of the Service is excluded in full if no corresponding Purchase Order has been entered into with the Customer in respect of the Service in question or if the Services in question have been provided free of charge.

**7.8. Notice of Claim.** The Customer may not invoke a defect in the Services if it did not disclose it to the Seller, in writing, within seven (7) days of the Seller's performance of the Service; or if the Customer could not reasonably have discovered the defect in the Service within this period and did not disclose it, in writing, to the Seller within seven (7) days of discovering the defect in the Service.

**7.9. Disclaimer of Liability.** Notwithstanding anything to the contrary in the Agreement, all rights and claims of the Customer in respect of Goods and Services shall, for whatever reason, lapse if (a) the Customer is late in notifying the Seller in accordance with this clause 7; (b) the Seller has not been given an opportunity to investigate the merits of the complaint or have them investigated immediately on the spot; and/or (c) in respect of the Services, twelve (12) months have elapsed after the Seller provided the Service.

**7.10. Indemnification.** The Customer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, fines and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller or a member of its group for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of materials or specifications provided by the Customer to the Seller, in particular in connection with the prefabrication or assembly of Prefabricated Products.

## 8. COMPLAINTS AND INSPECTION

**8.1. Apparent Defects.** At the time of delivery, the Customer must inspect the Products, or arrange for this to be done, in terms of volume, number and defects that can be established during a normal careful inspection (hereinafter "Visible Defects"). In this context, the Customer

shall bear the risk of performing a random (and not complete) inspection.

**8.2. Complaints.** Any complaints regarding volume, numbers or Visible Defects must be reported in writing to Seller immediately upon delivery and in all cases no later than 72 hours after delivery. Customer must notify Seller in writing of defects other than Visible Defects within seven (7) days of discovery. The report must carefully describe the nature and reasons for the complaint.

**8.3. Conformity Mark.** If the Seller delivers the Products upon presentation of a declaration of quality or CE marking regulations or their equivalent under applicable Law and regulations, these Products shall be deemed to be good and sound, except where the Customer provides (technical) proof to the contrary.

**8.4. Reach Regulation.** Where applicable, the Seller shall use its best endeavours to ensure that the Products delivered comply with the requirements of the Reach regulation (as amended from time to time) as published on [www.echa.europa.eu](http://www.echa.europa.eu) and all obligations arising from this Reach regulation. However, the Seller shall not be liable to the Customer for any failure by the Seller or any other party to comply with the requirements and all obligations arising under this Reach regulation.

**8.5. Disclaimer of Liability.** All rights and claims of the Customer in respect of the payment of a sum of money and/or the repair or return of the relevant Products and/or the making good of a shortfall, for whatever reason, as well as any right of the Customer to terminate the Agreement, shall lapse a) in the event of a late report pursuant to clause 8.2 hereof, b) if the Seller has not had the opportunity to immediately verify the validity of the complaint on the spot, or arrange for this to be done, and/or c) if 12 (twelve) months have passed since the date of delivery.

## 9. STORAGE

**9.1.** If the Customer fails to take delivery of the Products, notwithstanding clause 5.2, and except where such failure or delay is caused by a Force Majeure event (as defined in clause 14), the Seller may store the Products until delivery is made and charge the Customer for all related costs and expenses (including insurance).

## 10. DESIGN AND ENGINEERING SERVICES

**10.1.** The Products and/or Services shall be based on the information, authorizations, permits, and licenses provided by the Customer, the accuracy, procurement, validity, and completeness of which are the sole and full responsibility of the Customer. All consequences arising from the failure to obtain, inaccuracy,

expiration, nonexistence, and/or incompleteness of such information and documents shall be entirely at the Customer's expense and risk.

**10.1.1.** The Customer is responsible for obtaining and providing all authorizations, registrations, permits, and licenses necessary for the performance of the Services under this Agreement. The Services may only be provided/performed after the full procurement, submission, and verification of the applicable public and/or private authorizations, registrations, permits, and licenses by the Customer.

**10.1.2.** The Seller shall not be liable for fines, penalties, or delays in the provision of Services due to the lack of authorizations, permits, registrations, licenses, permits, or any other documents necessary for the proper commencement of the Services.

**10.1.3.** The Customer shall assume responsibility for any citations or penalties from public authorities resulting from lack of licensing, regularization of works, renewal of permits, or any other requirement from technical authorities.

**10.2. Services.** The Services are always project-specific and based on the purchase and application of the Products produced and/or delivered by or on behalf of the Seller. The Customer is not authorized to use the Services provided by the Seller with the application of third-party materials, and any consequences arising from such use shall be entirely at the Customer's expense and risk.

**10.3. IP Rights.** The IP Rights (as defined in Clause 18) related to the Products and/or Services, including methodologies, techniques, documents, and other associated information or knowledge, are and shall remain the property of the Seller. When necessary to achieve the intended purpose, the Customer shall obtain a non-transferable, non-exclusive, and royalty-free license to use such rights as agreed during the term of the Agreement.

## 11. TAXES

**11.1.** The Price does not include taxes. Except as specified in the invoice issued by the Seller, the Seller's price excludes all taxes (including, but not limited to, sales, service or invoicing taxes, excise taxes), tariffs, duties, and social contributions (including, but not limited to, amounts levied on the Products or their bill of materials in accordance with applicable law), which are collectively referred to as "Taxes".

**11.1.1.** Customer Pays Taxes. Customer shall pay all Taxes resulting from the Agreement or Seller's performance under the Agreement, whether Taxes levied, collected, withheld or assessed now or in the future. If Seller is required to impose, levy, collect, collect, withhold or assess any Taxes on any transaction under the

Agreement in addition to the purchase price, Seller will invoice Customer for such Taxes, unless at the time the order is placed, Customer provides Seller with an exemption certificate or other documentation sufficient to verify exemption from Taxes.

**11.2. Withholding.** If Taxes are required to be withheld from amounts paid or payable to Seller under the Agreement, (a) such withholding amount shall not be deducted from amounts due to Seller under the original price, (b) Customer shall pay the Taxes on behalf of Seller to the appropriate taxing authority in accordance with Applicable Law, and (c) Customer shall send to Seller, within 60 (sixty) days after payment, proof of Taxes paid sufficient to establish the amount of withholding and the recipient.

**11.3. Seller Not Liable.** In no event shall Seller be liable for Taxes paid or payable by Customer. This clause shall survive expiration or termination of the Agreement.

## 12. EXPORT CONTROL

**12.1.** Customer agrees to comply with all applicable export laws and regulations, including those of the United States and the United Kingdom, to ensure that Products, parts and technology provided by Seller under the Agreement are not used, sold, disclosed, released, transferred, or re-exported in violation of such laws and regulations.

**12.2.** Customer shall not export, re-export or transfer, directly or indirectly, any items or technology provided by Seller under the Agreement to: (a) any country designated under Applicable Law as a "State Sponsor of Terrorism" as described; (b) any person or entity on a blocked, embargoed or prohibited list maintained by a competent authority in accordance with applicable laws; or (c) an end user engaged in any nuclear, chemical or biological weapons activity. If Products or Services to be exported outside the U.S. and/or EU, or other jurisdictions where "dual use" declarations are required by law, are or are likely to be considered "dual use", Customer shall (or shall cause the end user of the Products/Service to) provide Seller, promptly upon request, with an "End User Declaration" in accordance with applicable legal requirements.

**12.3.** Seller shall not be liable to Customer for any delay and shall not be in breach of its obligations in the event of Customer's failure or delay in providing such statement.

## 13. RESCISÃO

**13.1. Notice of Termination.** Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

- a) the other Party is in material breach of any term of the Agreement and (if such breach is capable of cure) fails to cure

such breach within 30 (thirty) calendar days after written notice to that effect is required to be given.

- b) The other Party fails to make any payment required under the Agreement when due and fails to cure the default within 3 (three) calendar days after receipt of written notice of default; or
- c) Any insolvency or suspension of the operations of the other Party or any petition filed or proceeding brought by or against the other Party under any state, federal or applicable law relating to bankruptcy, composition, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.

Parágrafo único: Seller may terminate the Agreement at any time without payment of any compensation by giving 30 business days' written notice to Buyer prior to the effective date of termination.

**13.2. Change of Control.** In the event of a direct or indirect change in senior management or the power to direct or cause the direction of Customer's management and policies (whether through ownership of voting stock, by contract or otherwise), Seller may terminate the Agreement immediately upon written notice.

**13.3. Effect.** Termination shall not affect any of the Parties' rights and remedies that vested prior to termination. The termination rights provided in this clause 13 shall not limit the Parties' other rights and remedies as permitted by Applicable Law. Upon termination of the Agreement, Customer shall, at Seller's option, return to Seller or destroy all confidential information of Seller in its possession, and shall provide a certificate from an officer of Customer as to the destruction of all confidential information of Seller within 15 (fifteen) calendar days. Customer shall have no right to use Seller's confidential information after termination of the Agreement.

**13.4. Survival.** Any provision of the Agreement which is expressly or impliedly intended to take effect or continue in effect on or after termination or expiration of the Agreement shall remain in full force and effect, including, in any event, clauses 1, 7.10, 13.3, 13.4, 16, 17, 18, 18, 19, 20, 21, 22, 27, 28 and 29.

## 14. FORÇA MAIOR E OUTRAS EXCLUDENTES DE RESPONSABILIDADE

**14.1. Force Majeure and other Exclusions of Liability.** Neither Party shall be liable to the other, nor shall either Party be deemed in breach or default of its obligations under the Agreement to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of the affected Party, including, but not limited to: (a) natural or man-made disasters, acts of God, acts or omissions of governmental authorities, fires, severe weather conditions, earthquakes, strikes

or other labor disturbances, floods, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, pandemics, epidemics, quarantines, regional, national or international calamities, civil unrest, riots, severe delays in transportation or inability to obtain necessary materials or raw materials, components or services (all of the foregoing defined as "Force Majeure"); (b) in the case of Seller, acts or omissions of Customer, including failure to timely provide Seller with any access, information, tools, material, including raw materials, and approvals necessary to enable Seller Group to timely perform the required activities, and including, without limitation, unknown physical conditions at the site of an unusual nature and differing materially from those ordinarily encountered and generally recognized as occurring in work of the character contemplated by the Agreement, shall also be considered Force Majeure in favor of Seller.

**14.1.1.** The affected Party shall promptly notify the other Party in the event of a delay under this clause.

**14.1.2.** Delivery or performance dates shall be extended for a period equal to the time lost due to such delay, plus such additional time as is reasonably necessary to overcome the effect of such delay.

**14.1.3.** If Seller is delayed by acts or omissions of Customer, or by the prerequisite work of other contractors of Customer, Seller shall also be entitled to an equitable price adjustment. Under no circumstances shall Customer's payment obligation be deemed excusable under this clause. Customer further represents and acknowledges that its experience and/or skills are such that it will perform its obligations even in cases of Force Majeure to the fullest extent possible and as permitted by Applicable Law.

**14.2. Right to Terminate.** If a delay arising from the circumstances set forth in this clause 14 extends for more than 90 (ninety) days and the Parties have not agreed upon a revised basis for resuming the work, which may include an equitable price adjustment, either Party (except where such delay is caused by Customer, in which case only Seller), may terminate the Agreement upon 30 (thirty) days prior written notice. In such event of delay, Customer shall pay Seller the pro rata price for all work and activities performed prior to the effective date of termination.

## 15. ENVIRONMENTAL, HEALTH AND SAFETY (EHS)

**15.1. Workplace Safety.** In the event that the Seller's employees are required to perform services at a location designated by the Customer, the Customer shall take all necessary measures to provide a safe, sound, and healthy working environment, including transportation and accommodation, if applicable, for the Seller's personnel.

**15.2. Access to the Worksite.** The Customer



shall inform the Seller of any risks, hazards, or conditions that may affect the health or safety of its workers, including the presence or potential presence of hazardous or unhealthy materials, and shall provide, in addition to personal protective equipment ("PPE"), relevant information, including safety data, site safety plans, risk assessments, and job hazard analyses.

## 16. LIMITATIONS OF LIABILITY

**16.1. Special or Consequential Losses.** The Seller shall not be liable to the Customer for any indirect or consequential damages of any kind, such as damages due to business interruption, loss of profits, loss of opportunity, reputational damage, or moral damages, whether or not such damages are based on tort.

**16.2. Total Liability.** The Seller's liability for its contractual and non-contractual obligations shall be limited to the price or amount actually paid by the Customer for the Products and/or Services, whichever is lower.

**16.3. Willful Misconduct.** The limitations and exclusions set forth above in this clause shall apply only to the extent permitted by applicable law and shall not apply in the event of deliberate intent or willful misconduct by the Seller or its management.

## 17. INDEMNITY

**17.1.** Customer shall release, defend, indemnify and hold harmless Seller, Seller's affiliates and each of their respective officers, directors, managers, employees, representatives and consultants (the "Seller Indemnitees") from and against any and all liability, loss, damages, claims, fines, penalties, judgments, settlements, costs and expenses (including legal fees and expenses), including personal injury or death to Customer's employees or damage to property, arising out of or in connection with the Agreement and Customer's activities in connection with the Agreement, including (a) the handling, storage, marketing, sale, resale, distribution, use or disposal of the Products or Services (whether used alone or in combination with other substances) by Customer or by any third party at Customer's premises or by any third party at any location or (b) Customer's failure to comply with instructions or regulations relating to (product) safety or Applicable Law. This clause shall survive expiration, termination or cancellation of the Agreement.

## 18. SELLER'S INTELLECTUAL PROPERTY RIGHTS

**18.1.** The intellectual property rights of the Seller include, without limitation, all trademarks, trade names, logos, designs, symbols, emblems, distinctive marks, slogans, service marks, copyrights, patents, models, drawings, know-

how, information and any other distinctive material of the Seller, the Seller Group and the Orbia Group, whether or not subject to registration or filing, including all registrations or applications to register any of the foregoing; and all rights in the nature of any of the foregoing, and all rights having an equivalent or similar effect, and the right to apply for any of the rights referred to in this definition in any jurisdiction ("Intellectual Property Rights").

**18.2.** Seller retains all Intellectual Property Rights in the Goods and Services, and nothing contained herein shall be construed as granting to Customer any right or license, express or implied, to Seller's Intellectual Property Rights. In particular, Customer shall not use Seller's name, logo or other Intellectual Property Rights without Seller's prior written consent.

**18.3.** Customer shall not do or fail to do anything that may infringe, damage, endanger or impair Seller's Intellectual Property Rights.

**18.4.** Customer shall not: (a) modify, remove or deface any trademark or other means of identification of Products or Services delivered by Seller; (b) use Seller's Intellectual Property Rights in such a way that their distinctiveness or validity may be affected; (c) use trademarks other than Seller's trademarks with respect to Goods or Services delivered by Seller without Seller's prior express written consent; or (d) use trademarks or trade names similar to Seller's trademarks or trade names that are likely to cause confusion or deception.

**18.5.** For the purposes hereof, "Seller Group" shall refer to Wavin B.V. its subsidiaries and group of companies, and Orbia Group shall refer to Orbia Advance Corporation, S.A.B. de C.V. and its subsidiaries and group of Companies.

## 19. DATA PRIVACY

**19.1.** Each Party shall comply with all applicable data protection laws. Unless otherwise agreed by the Parties, Seller (or its subcontractors) shall not process information relating to any identified or identifiable natural person ("Personal Data") for Client or on Client's behalf. In the event that Seller processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with Seller's Privacy Notice.

## 20. CONFIDENTIALITY

**20.1.** "Confidential Information" means the terms of the Agreement and all non-public information, technical data or know-how in any form and materials (including samples) relating to the business, Products, Services and/or activities of Seller and/or its affiliates, disclosed or made available to Customer in connection with the Agreement, whether orally or in writing, electronically or otherwise, and whether or not marked as proprietary or confidential, and any

information derived from the Confidential Information.

**20.2.** Confidential Information does not include information (i) that is known to Customer at the time of disclosure or lawfully obtained by Customer on a non-confidential basis from a third party; (ii) that is now, or in the future, through no act or failure to act on the part of Customer, known to the general public; or (iii) that is independently developed by Customer without reliance on the Confidential Information, in each case as demonstrated by contemporaneous documentary evidence.

**20.3.** The Client shall not use the Confidential Information except for the purpose of exercising its rights or performing its obligations under the Agreement (the "Purpose").

**20.4.** Customer shall not disclose the Confidential Information to any third party except to its employees and agents who have a need to know such information for the Purpose and who are subject to written non-disclosure obligations at least as strict as those contained in the Agreement.

**20.5.** Customer shall not reverse engineering Confidential Information, including samples, without Seller's permission.

**20.6.** Customer shall take reasonable and prudent security measures to prevent use or disclosure of Confidential Information in violation of this Agreement.

**20.7.** Customer shall be responsible for the obligations of its employees and agents under the Agreement and Customer assumes liability for damages arising out of any breach of this Agreement by its employees and agents, which would be a breach of this Agreement if committed directly by Customer, including without limitation, an unauthorized use of Confidential Information.

**20.8.** Upon Seller's request, Customer shall promptly return all copies, whether written, electronic or otherwise, of such Confidential Information, or securely remove and destroy the Confidential Information. Notwithstanding the foregoing, Customer may retain a copy of the Confidential Information for records management purposes or copies in company-wide archival backup systems.

**20.9.** Notwithstanding the destruction or retention of Confidential Information, Client shall remain subject to its confidentiality obligations hereunder.

**20.10.** In the event that Client is required to disclose any Confidential Information by order of a court or any governmental agency, by law, regulation, judicial or administrative process, Client shall: (a) give Seller prior written notice of such disclosure, if legally permitted; (b) reasonably cooperate with Seller, at Seller's request and expense, in resisting or limiting such disclosure or in obtaining a protective order; and (c) in the absence of a protective order or other

remedy, disclose only that portion of the Confidential Information that is legally required to be disclosed in the opinion of counsel and ensure that confidential treatment will be accorded to the information disclosed.

**20.10.1.** After termination, Customer's obligations under this Agreement with respect to Confidential Information shall continue in full force and effect as follows: (i) in the case of any Confidential Information that constitutes a trade secret within the meaning of Applicable Law, for so long as such information remains a trade secret; or (ii) in the case of any other Confidential Information or confidential materials, for a period of five (5) years from the date of disclosure.

**20.10.2.** Seller shall be entitled to injunctive relief for any breach or threatened breach of this provision without the requirement to post a bond or prove damages.

## 21. CUSTOMER DATA

### 21.1. Customer Data and License Granted.

The Seller acknowledges that, as between Seller and Customer, Customer owns all right, title and interest, including all intellectual property rights, in and to the Customer Data (as defined below).

**21.1.2.** Customer hereby grants to Seller (i) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify and otherwise use and display the Customer Data for internal research and product/service development purposes and to provide Products and Services to Customer, and (ii) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify and use and display the Customer Data incorporated in the Aggregate Statistics.

**21.2. Customer Feedback.** If Customer or any of its employees or contractors suggests or recommends changes to the Product or Services, including but not limited to new features or functionality related thereto, or shares comments, questions, suggestions or the like ("Feedback"), Seller is free to use such Feedback regardless of any other obligations or limitations between the Parties governing such Feedback.

**21.2.1.** Customer hereby assigns to Seller on behalf of Customer and on behalf of its employees, contractors and/or agents, all rights, ownership and interests in and to the Feedback and Seller is free to use, without any attribution or compensation to any Party, any ideas, know-how, concepts, techniques or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Seller is not obligated to use any Feedback.

"Customer Data": "Customer Data" means, other than aggregated statistics, information, data and other content, in any form or medium, that is submitted, posted or transmitted or made available by or on behalf of Customer, or a user of Customer's Product or Services that incorporate the product or services that are the subject of the Agreement, from Seller that are generated by the Product or Service or the use of the Product or Service, provided that Customer Data excludes any Personal Data.

## 22. AGGREGATE STATISTICS

**22.1.** Notwithstanding anything to the contrary in the Agreement or any other non-disclosure agreement between the Parties, Seller may monitor Customer's use of the Product or Services and collect and compile Aggregate Statistics (as defined below).

**22.2.** As between Seller and Customer, all right, title and interest in the Aggregate Statistics, and all intellectual property rights therein, belong to and are retained solely by Seller.

**22.3.** Customer acknowledges that Seller may compile Aggregate Statistics based on Customer Data collected from Customer's (or its customers') use of the Product or Services.

**22.4.** Customer agrees that Seller may (i) make the Aggregated Statistics available to the public in accordance with Applicable Law, and (ii) use the Aggregated Statistics to the extent and in the manner permitted by Applicable Law, provided that such Aggregated Statistics do not expressly identify Customer.

"Aggregate Statistics" means data and information relating to Customer's (or its customers') use of the Product or Services that is used by Seller in the aggregate and does not directly identify Customer, including compiling statistical and performance information relating to the provision and operation of Seller's Product and Services.

## 23. COMPLIANCE AND APPLICABLE LAW

**23.1. Industry Standards.** The Agreement is based on Seller's design, manufacture, testing and delivery of the Products and Services in accordance with: (i) its own design criteria, manufacturing processes and procedures and quality assurance program; (ii) those portions of the specifications, codes and industry standards in effect on the date of execution of the Agreement that are specified to Seller; (iii) Applicable Law; and (iv) the mutually agreed written terms and specifications set forth in the Agreement.

**23.2.** If any of the foregoing changes occur, Seller may unilaterally change the Products and Services to ensure compliance with any of the foregoing. In addition, the Seller shall be entitled to change the agreed price, delivery/performance date or warranties unilaterally.

**23.3.** If such change prevents the Seller from performing its obligations without infringing Applicable Law or makes the Seller's performance of its obligations unreasonably burdensome or unbalanced, the Seller shall also be entitled to terminate the Agreement without any liability.

**23.4.** Without prejudice to any other provision of the Agreement, the Parties shall at all times comply with all Applicable Law in the performance of the Agreement.

**23.5. Anti-Bribery and Anti-Corruption.** Customer shall ensure that it, its directors, employees or subcontractors shall not offer, promise or give any undue pecuniary or other advantage to Seller's employees or third parties (including public officials) for the purpose of obtaining or retaining business or other improper advantage, in connection with the Agreement. Customer shall comply with all applicable anti-bribery legislation (including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act) and shall have implemented appropriate preventative measures to ensure that employees and subcontractors comply with applicable law.

## 24. ASSIGNMENT, NOVATION AND SUBCONTRACTING

**24.1.** The Customer may not assign or novate the Agreement, in whole or in part, including by a change of structure or ownership of the Customer, without the prior written consent of the Seller, which consent shall not be unreasonably delayed or withheld, provided that the Seller shall be entitled to withhold such consent in any event if the assignee/novation transferee lacks adequate financial standing, is a competitor or potential competitor of the Seller or its affiliates, causes the Seller's group to be in breach of Applicable Law and/or fails to comply with the Seller's Code of Ethics.

**24.2.** Seller may assign or novate to third parties the Agreement, in whole or in part, and Seller shall notify Customer in writing in such event.

**24.3.** The Parties agree to execute such documents as may be necessary to give effect to the permitted assignments or novations set forth in this clause.

**24.4.** In the event of a novation or assignment by Customer, Customer shall cause the novation beneficiary/assignee to provide additional payment security upon Seller's reasonable request.

**24.5.** Any assignment or novation in violation of the foregoing shall be null and void and of no effect to the Parties.

## 25. SUBCONTRACTORS

**25.1.** Seller has the right to subcontract its obligations under this Agreement. The use of a subcontractor shall not relieve Seller of liability under this Agreement for the performance of the subcontracted obligations.

## 26. CHANGES

**26.1.** Either Party may at any time propose changes to the Agreement in the form of a draft change request.

**26.2.** Neither Party is obligated to proceed with the change request until both Parties agree to such change in writing.

**26.3.** Unless otherwise agreed by the Parties, the price for additional work arising from such changes shall be Seller's then current rates for time and materials.

## 27. GOVERNING LAW

**27.1.** The Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which Seller is incorporated, excluding in any event conflict of law rules.

**27.2.** The Parties acknowledge and agree that the applicability of the United Nations Convention on Contracts for the International Sale of Goods (often referred to as the Vienna Sales Convention) is expressly excluded.

## 28. DISPUTE RESOLUTION

**28.1.** Any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts having jurisdiction in the jurisdiction and district where Seller is incorporated, and the Parties irrevocably submit to the exclusive jurisdiction of such courts for these purposes.

## 29. GENERAL PROVISIONS

**29.1. Entire Agreement.** This Agreement represents the entire agreement between the Parties and supersedes and extinguishes all prior agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any prior agreements entered into by and between the Parties are superseded by this Agreement.

**29.2. No Oral Modification.** No modification, amendment, termination, waiver or other change shall be binding on either Party unless agreed to in writing by its authorized representatives. Each Party agrees that it has not relied upon or been induced by any representation of the other Party not contained in this Agreement.

**29.3. Severability.** The invalidity in whole or in part of any part of the Agreement shall not affect the validity of the remainder of the Agreement. In the event that any provision of the Agreement is held invalid or unenforceable, only the invalid or unenforceable portion of the provision shall cease to be valid, leaving intact and in full force and effect the remainder of the sentence, clause and provision, to the extent not held invalid or unenforceable.

**29.4. Headings.** The headings of the clauses and paragraphs herein are for reference purposes only and shall not govern the meaning or interpretation of any provision of the Agreement.