



# STANDARD TERMS AND CONDITIONS OF PURCHASE

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## 1. ACCEPTANCE

Supplier's (i) full or partial performance under the Agreement, or indication thereof, or (ii) acknowledgement of the Agreement, is acceptance of the Agreement and all terms and conditions contained thereof, including these Terms and Conditions. Any terms and conditions proposed in Supplier's acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflict with the terms herein are hereby rejected.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1. Definitions

Unless otherwise expressly set forth herein, the following capitalized terms whenever used in these Terms and Conditions shall have the meaning set forth below:

- 2.1.1. "Agreement" means the long-term purchase agreement and the Order(s) concluded further to that agreement or if no long-term purchase agreement is concluded the Order(s) or other agreement that references these terms and conditions, and pursuant to which Supplier supplies Goods to the Buyer.
- 2.1.2. "Business Days" means Saturday, Sunday or other day on which the principal commercial banks in the province of Quebec are not open for business during normal business hours.
- 2.1.3. "Buyer" means Opsens Inc.
- 2.1.4. "Buyer's Customer" means the ultimate user of the Goods provided by Supplier under an Agreement.
- 2.1.5. "Confidential Information" shall mean the technical, financial, business or commercial information, the proprietary information including knowledge and know-how and the information considered as confidential and treated as such by Buyer, whether oral, written or digital, provided, disclosed or rendered available by Buyer or its agent or created by Supplier using Buyer's information, before, on or after the effective date of the Agreement concluded, and all copies and tangible or intangible embodiments thereof, excluding however any information (i) that is already in the public domain or becomes available to the public through no breach of the Agreement or of these Terms and Conditions; (ii) that was lawfully in the possession of Supplier without an obligation of confidentiality; (iii) that is received by Supplier independently from a third party free to lawfully disclose such information to Supplier; or (iv) that is subsequently independently developed by Supplier, without use of Buyer's Confidential Information, all as evidenced by proper written and contemporaneous evidence. For the purpose of these Terms and Conditions and Agreement, the information created for, disclosed or rendered available by the Buyer or on its behalf shall be deemed confidential.
- 2.1.6. "Delivery Date" means the date of delivery for Goods as specified in an Agreement.
- 2.1.7. "Goods" means goods, parts, supplies, software, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Agreement, and where the context requires such services as are necessary and incidental to the delivery of Goods under any Agreement. For clarity, changes made by Buyer to the part numbers and/or other description of the Goods as a

result of a change under the changes clause of these Terms and Conditions will continue to be Goods.

- 2.1.8. "Intellectual Property" means all intellectual property rights, titles and interests and moral rights of any kind or nature throughout the world including, without limitation all inventions, ideas, discoveries, processes, formulae, technical developments and information, works, documentation and data, specifications, methods and patterns whether or not patentable or copyrightable, and all: (i) patents, patent applications, continuations, continuations-in-part, divisionals, reissues, re-examinations; (ii) copyrights, copyright applications and copyrightable subject matters, registrations substitutions and extensions; (iii) industrial designs, applications and registrations; (iv) trademarks, logos, service marks and trade names, and their respective applications and registrations and all goodwill associated therewith; (v) trade secrets and know how; all other (vi) types of proprietary rights thereof such as the right to apply for protections under statutory proceedings available for those purposes.
- 2.1.9. "Lead Time" means the maximum time within which Supplier agrees to deliver Goods after receipt of an Agreement for such Goods. Unless otherwise mutually agreed between Buyer and Supplier, Lead Times are measured in calendar days.
- 2.1.10. "Order" means a paper or electronic document sent by Buyer to Supplier to initiate the ordering of Goods, such as a purchase order, a scheduling agreement, or other authorization, and including change notices, supplements or modifications thereto.
- 2.1.11. "Party" or "Parties" shall mean Buyer and/or Supplier, individually or collectively, as the context requires.
- 2.1.12. "Specifications" means all requirements with which Goods and performance hereunder must comply, including, without limitation, drawings, instructions and standards, as such requirements are specified and/or referenced in Agreements, and may be modified from time to time by Buyer.
- 2.1.13. "Supplier" means the legal entity providing Goods or otherwise performing work pursuant to an Agreement.
- 2.1.14. "Terms and Conditions" means these Standard Terms and Conditions of Purchase.

## 2.2. **Interpretation**

- 2.2.1. Unless the context requires otherwise: (i) grammatical variations of any term defined have similar meanings; and (ii) words importing the singular number shall include the plural and words importing the masculine gender shall include the feminine and neuter genders and vice versa. The division of these Terms and Conditions into separate Sections, and the insertion of headings are for convenience of reference only and shall not limit the scope of these Sections. The word "including" or any variation thereof means "including without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.
- 2.2.2. Time is of the essence of these Terms and Conditions. Despite the foregoing, if any decision, notice or act is required hereunder to be done or given, or if any period of time is to expire hereunder on any day that is not a Business Day such act shall be required

to be done or notice shall be required to be given or time shall expire on the next succeeding Business Day.

2.2.3. In the event of any conflict or inconsistency between the provisions of the Agreement and any ancillary document, such conflict or inconsistency shall be resolved as follows: in the event of inconsistencies between a long-term purchase agreement and any of the documents listed below, the long-term purchase agreement shall control unless the inconsistent term in the other documents is clearly intended to supersede the corresponding term in such long-term purchase agreement, in which case the term of the other documents will control, but only as to its specific subject matter and not as to the subject matter of any other provision; in this regard: (i) any obligation pertaining to the provision of the Goods by Supplier which appears to be more stringent in an ancillary document (e.g. as to delivery dates, milestones, quality level, etc.) shall have precedence over the provisions dealing with the same obligation in the long-term purchase agreement; and (ii) any specification in an ancillary as to the currency applicable to the costs of the Goods and the payments due for any specific project shall have precedence over any choice of currency provided for in the long-term purchase agreement. The documents set forth below shall be given precedence to the provision in the following order of priority:

- 2.2.3.1 terms of any long-term purchase agreement if any;
- 2.2.3.2 the applicable Order(s) with any attached documents;
- 2.2.3.3 any Buyer's issued Specifications, work statement and engineering drawing;
- 2.2.3.4 these Terms and Conditions;

### **3. PROVISION OF GOODS**

3.1. Supplier agrees to supply to Buyer, and Buyer agrees to purchase Goods from Supplier, subject to the terms and conditions set forth herein and in the relevant Agreement to be concluded from time to time by the parties. Once concluded, the Agreement shall constitute, with these Terms and Conditions and other documents as applicable the entire agreement between the parties and shall replace all prior written or oral representations made and all commitments taken. As such and except as expressly indicated otherwise any Agreement shall be considered to incorporate all terms and conditions provided for in these Terms and Conditions. In the event of inconsistencies between any Agreement or these Terms and Conditions, Subsection 2.2.3 shall find application.

3.2. Buyer hereby engages or may engage Supplier to design, develop, manufacture, assemble and/or test the Goods in accordance with Buyer's quality, delivery and price requirements, as set forth herein, at the facilities of Supplier, each as agreed to in writing by Buyer.

3.3. Supplier shall provide de Goods in a diligent and timely manner, and in accordance with the timeline agreed upon. Without limiting the generality of the foregoing, Supplier shall:

- 3.3.1. deploy technical and human resources necessary for the proper performance of its obligations;
- 3.3.2. upon request, promptly inform Buyer of the progress of the delivery of the Goods;
- 3.3.3. ensure the Goods supplied under the Agreement comply with applicable laws, applicable Agreement, these Terms and Conditions and any other Specification and are in good

working conditions, of good quality and merchantability and fit for the specific purpose for which they were purchased;

- 3.3.4. obtain and maintain all licenses, permits, certifications and other authorizations as may be required, and use its best efforts to comply with any new requirements should any applicable law be modified;
- 3.3.5. will be responsible for the production, packaging and shipping of the Goods to Buyer, and will assume responsibility for the Goods until delivered to Buyer's premises as unless otherwise agreed;
- 3.3.6. will ship every delivery on time to Buyer subject to Section 4, and if Supplier is not able to respect the confirmed shipping date, Supplier will have to promptly notify the Buyer; and
- 3.3.7. as applicable will require its personnel and permitted subcontractors if any to sign Intellectual Property assignment and confidentiality and non-disclosure agreements sufficient to enable Supplier to comply with its obligations under the Agreement.

#### **4. DELIVERY**

- 4.1. Buyer may issue Order(s) for Goods to Supplier, which Supplier shall accept to deliver. All Order(s) shall be deemed to incorporate the present Terms and Conditions. Supplier shall fill all Order(s) released and comply with the requirements on each Order. Order(s) may either be in the form of paper or electronic documents sent from Buyer to Supplier.
- 4.2. The delivery information in the Buyer Order shall establish the Delivery Dates for the Goods.
- 4.3. Time is of the essence in Supplier's performance of an Agreement, and Supplier shall deliver Goods by the Delivery Date.
- 4.4. Shipment shall be to the location directed by Buyer. Unless otherwise specified in an Agreement, (i) the delivery terms for Goods shall be FCA Supplier's facility (Incoterms 2010) (ii) title shall pass to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point and (iii) risk of loss shall transfer to Buyer at Supplier's facility.
- 4.5. Delivery Dates which do not allow sufficient Lead Time shall be considered need dates and Supplier shall use its best efforts to meet such need dates. If Supplier agrees to the need dates, the need dates shall be considered the new Delivery Dates.
- 4.6. If Supplier is unable to deliver Goods by the Delivery Date, Buyer may, without liability: (i) reduce or cancel its requirements for any part of the quantity of the Goods that cannot be delivered by the Delivery Date, or (ii) reallocate to another Order, or (iii) reschedule, any portion of the Goods that cannot be delivered by the Delivery Date. In addition to any other rights and remedies that Buyer may have, in the event of Supplier's nonconformance with any of the requirements under this Section or any other delivery obligation, Supplier shall be responsible for all shipping costs and expenses incurred with respect to such nonconformance, including the costs of expedited shipment with respect to late deliveries.
- 4.7. Without affecting any other rights of Buyer, Buyer may cancel an Order, in whole or in part, without any liability to Supplier, at any time prior to commencement of Lead Time.

## **5. QUALITY REQUIREMENTS**

- 5.1. Supplier shall comply with all drawings, Specifications, Buyer's quality documents and all subsequent versions thereof applicable at the time of deliveries and incorporated in Agreements placed by Buyer with Supplier for Goods.
- 5.2. When applicable, or upon Buyer's request, Supplier shall obtain and/or maintain ISO 13485:2016 certification or other equivalent internationally recognized certification (at Buyer's sole discretion), throughout the performance of the Agreement.
- 5.3. Supplier shall provide to Buyer within 48 hours of an escape or incident, a containment plan for other possible nonconforming Goods remaining in stock and notify Buyer of any Goods in transit. Supplier shall provide root cause analysis, and corrective action within ten (10) days of any escapes or incidents, or such lesser time as required by Buyer. Supplier shall provide related on-site technical and other support whenever and wherever necessary at Supplier's cost.
- 5.4. In the event that Supplier's quality performance (the number of acceptable units received over the number of all units received) is below 95%, based on a three-month rolling average, as determined by Buyer (each, a "Measurement Period"), and if Buyer processes a confirmed rejection (a "Reject"), Buyer may, in addition to any other rights or remedies available to Buyer under the Agreement or these Terms and Conditions, charge Supplier (or set off from payments due to Supplier) up to \$250 for each delivery lot which may contain confirmed Reject(s) (each, a "Reject Charge"). The Parties agree that a Reject Charge is a reasonable estimate of the initial administrative costs Buyer will incur to process a confirmed Reject, and that the Reject Charge is not a penalty. The Parties further agree that the Reject Charge compensates Buyer only for Buyer's initial administrative costs; it does not compensate Buyer for other damages it may sustain as a result of Supplier's failure to meet quality requirements, including: (a) costs, expenses and damages Buyer incurs in responding to, correcting or mitigating the effects of Supplier's failure to meet quality requirements; and (b) costs, expenses and damages Buyer pays to its customer(s) as a consequence of Supplier's failure to meet quality requirements. Except with respect to Buyer's initial administrative costs, the Parties agree that the Reject Charge is not and shall not be construed as Buyer's sole or exclusive remedy for Supplier's failure to meet quality requirements.

## **6. PACKAGING**

- 6.1. All Goods must be suitably packaged and prepared for shipment to withstand normal transportation and stocking functions, as may be required in the applicable Buyer SPS (standard operating procedures developed by the Buyer) specified on the Agreement or if no specification is provided for in accordance with best commercial practices followed for similar types of Goods to be used for similar purposes. Containers must be in accordance with best commercial practices and all applicable laws. When multiple Agreements or Goods are combined in one container, they must be separately packaged inside that container.
- 6.2. A separate invoice and a separate packing list are required for each Agreement and must accompany each shipment. Supplier will provide bar coded shipping labels with each shipment. When required in the Agreement, Supplier shall also provide a certificate of compliance (CofC) duly signed by its authorized representative certifying the compliance of the Goods with all Specifications contained in the Agreement. All documents must include the applicable Order number.

## **7. INSPECTION, ACCEPTANCE AND REJECTION**

- 7.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with all requirements of an Agreement, the Specifications and other terms agreed upon, applicable laws and Supplier's quality assurance system.
- 7.2. Buyer may, with respect to any Goods: (i) reject all or a portion of any nonconforming Goods; (ii) accept all or a portion of such nonconforming Goods as-is; or (iii) accept any conforming Goods and reject the rest.
- 7.3. If there is a non-conforming Good shipped or any other deficiency as to the Goods provided, then Buyer shall, at its sole option and in addition to any other recourse, either request: **(i)** that the amounts paid for these Goods be refunded (or not pay for such Goods); or **(ii)** that other Goods be manufactured anew in which case Supplier will use its best efforts to comply with the foregoing and solve at its expense the problem in a timely manner. Supplier shall further ensure the non-repetitiveness of this issue.
- 7.4. Within ten (10) days of Supplier's receipt of Buyer's notification of a nonconformity, Supplier shall investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer.
- 7.5. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

## **8. PRICES, INVOICING AND PAYMENT**

- 8.1. All prices will be firm and fixed and not subject to any escalation.
- 8.2. Invoices must include at a minimum Supplier's name, Order number, Goods description, quantity, unit price and the total price of the Goods as well as the payment address, amount of applicable taxes and Goods and Services Tax (GST) and Quebec Provincial Sales Tax (PST) registration numbers. All detailed invoices shall be sent to Buyer at the address to be specified in the Agreement.
- 8.3. Buyer shall pay Supplier for Goods as follows:
  - 8.3.1. upon its satisfactory verification that the Goods are properly delivered, then Buyer shall pay Supplier for all undisputed amounts properly due under the relevant invoice within forty-five (45) days of Buyer's receipt thereof as unless otherwise agreed.
  - 8.3.2. Should the Goods not conform to the requirements set forth in the Agreement, if any, or in the Agreement, then the Buyer shall be entitled to withhold payment and shall send a notice of non-compliance to Supplier, which shall then be required to correct, within thirty (30) days of receipt of such notice, any such non-conformance at its own cost. Upon satisfactory verification that said Goods are conform to the Specifications, Supplier shall be entitled to receive, within sixty (60) days, the undisputed amounts properly due.
- 8.4. Payment will be made to Supplier as "payee". Buyer shall not be responsible for paying any amounts due to any other person. Supplier shall be responsible to make any such payments to

relevant personnel and any other person as may be applicable. Payment will be made by cheque or wire transfer as provided for in the Agreement.

## **9. TAXES**

- 9.1. Unless otherwise stated in the Agreement, all payments, prices, fixed or otherwise, sums, payments, fees and monetary amounts mentioned in the Agreement are exclusive of any and all sales taxes, value added taxes, goods and services taxes, taxes levied upon importation, such as customs duties, excises, or any other taxes ("Taxes") levied in regard of any of the transactions covered by the Agreement.
- 9.2. When invoicing, Supplier shall (i) include amounts of Taxes, or specific fees Supplier is required by applicable law to add-on to the sales price and collect from Buyer or otherwise is legally due from Buyer, and (ii) separately state each of the Taxes.
- 9.3. Where applicable, Buyer shall pay the Canadian Federal Goods and Services Tax (GST), the Harmonized Sales Tax (HST), as well as any applicable Provincial Sales Tax directly resulting from the transactions hereunder. Such taxes shall be shown separately on all of Supplier's sales invoices along with Supplier's tax registration numbers.
- 9.4. Supplier is solely responsible for the fulfillment of Supplier's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under the Agreement to the proper tax authority. Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of non-payment of Taxes collected by Supplier from Buyer will be borne by Supplier. Supplier shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.

## **10. INSPECTION AND AUDIT RIGHTS**

- 10.1. Supplier (which, for the purposes of this Section, includes Supplier and its suppliers) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's Customers and/or to any competent regulatory authority, unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books and records (including, without limitation, agreements and technical inspection, quality records and financial books related to the Goods), wherever such books and records may be located (including third-party repositories), and (ii) provide Buyer, Buyer's Customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at Supplier's premises, including manufacturing and test locations for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Agreement or for any other purpose indicated by Buyer's Customers and/or said authority in connection with the design, development, certification, manufacture, sale, use and/or support of the Goods. Supplier and its suppliers shall furnish all reasonable facilities and assistance for the safe performance of the inspection, test, audit and/or investigation.
- 10.2. Supplier shall maintain complete manufacturing and inspection records for all Goods which shall be available to Buyer during performance of an Agreement and until the later of: (i) three (3) years after final payment, (ii) final resolution of any dispute involving the Goods delivered hereunder, or (iii) the latest time required by applicable laws and regulations.
- 10.3. Any corrective action requested by Buyer, Buyer's Customers and/or any said authority following any such inspection, test, audit or investigation shall be implemented by Supplier at no cost.



## **11. SUBCONTRACTING**

Supplier shall not subcontract the whole or any part of its obligations hereunder without first receiving the written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Where such consent is granted, Supplier shall not be released or relieved from any obligations or liabilities of Supplier under these Terms and Conditions or the Agreement nor shall Buyer be prevented from pursuing any other remedies it may be entitled to. Supplier shall remain liable and responsible to Buyer for the actions and omissions of any subcontractor and shall ensure that any subcontractor strictly adheres to all terms of these Terms and Conditions and the Agreement. When subcontracting any part of its obligations hereunder, Supplier shall provide Buyer with all details concerning a subcontractor and any and all subcontracted obligations, including the identity of such subcontractor; the particular obligations to be subcontracted and any other information as may reasonably be required or requested by Buyer.

## **12. CHANGES**

- 12.1. Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Agreement, including changes in whole or part to: (i) shipping or packing instructions, (ii) place of delivery, (iii) Specifications, (iv) the statement of work, (v) Buyer Customer flowdown requirements and/or (vii) quality requirements (collectively "Change(s)").
- 12.2. Except as set forth herein, or as otherwise agreed, if any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Agreement accordingly. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) working days after Supplier's receipt of the Change. Supplier acknowledges and agrees that certain changes in delivery schedule are normal and anticipated in the course of the Agreement. Supplier further agrees that the cost of such changes, is included in the prices provided under the Agreement. Accordingly, Supplier shall not be entitled to a price adjustment hereunder for any Change to the delivery schedule when deliveries are rescheduled within twelve (12) months of the delivery schedule in existence at the time of the Change.
- 12.3. If the cost of material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Agreement, as directed by Buyer.
- 12.4. If Supplier considers that Buyer's conduct constitutes a Change, Supplier shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Supplier's performance. Supplier shall take no action to implement any such Change without written direction from Buyer's authorized procurement representative.

## **13. PROCESS MODIFICATION**

Supplier shall notify Buyer, in writing, or seek Buyer's prior written consent, if required by Buyer or Buyer's Customer, of any plans to modify any processes related to the manufacture of the Goods (including relocation of the manufacturing process within or outside of its facility; changes to its manufacturing methods, applications and operations; and changes in equipment (collectively, "Process Modification")) at least ninety (90) days before such Process Modification will occur, so that Buyer may assess the potential impact to quality and delivery of Goods. In addition to the

foregoing, in the event Supplier proposes to make any changes to the design, composition or materials of any Goods, or changes to any lower tier suppliers, Supplier shall provide notice to Buyer and obtain Buyer's prior written consent.

#### **14. STOP WORK ORDER**

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Agreement for a period of up to six (6) months ("Stop Work Period"). Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer may either: (i) cancel the stop-work order and Supplier shall resume work; or (ii) terminate the work covered by the stop-work order, for convenience. If Buyer has not exercised its rights set forth in either (i) or (ii) above prior to the expiration of the Stop Work Period, then the portion of the Agreement, covered by the stop-work order, shall be deemed terminated for convenience.

#### **15. REPRESENTATIONS AND WARRANTIES**

15.1. Supplier represents and warrants that:

- 15.1.1. the performance of its obligations and as applicable the execution and delivery of the Agreement: (i) do not conflict with or violate any requirement of applicable laws; (ii) do not conflict with or violate any provision of its articles of incorporation, bylaws, limited partnership agreement and other similar documents; (iii) do not conflict with, violate or breach or constitute a default or require any consent under any contractual obligation or court or administrative order by which that Party is bound; and (iv) and no other contract will prevent the Supplies to comply with its obligations under the Agreement.
- 15.1.2. it has the full right and authority to contract these obligations and to enter into the Agreement, the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby have been duly authorized and the Agreement has been duly executed and delivered and constitutes the valid and binding obligation, enforceable in accordance with its terms and the execution;
- 15.1.3. it has in place and shall implement at all times and quality insurance system which shall be subject to review to ensure compliance with applicable laws and clients' needs, as well as technical, physical, technological administration and other measures as may be required to preserve the confidentiality of the Confidential Information and trade secrets, and to that end will only disclose such Confidential Information and trade secrets in strict compliance with these Terms and Conditions and the Agreement; and all current and as applicable former employees and subcontractor have concluded confidentiality and assignments as provided for in Subsection 3.3.7;
- 15.1.4. that the facilities in which the Goods will be manufactured are and will remain compliant with applicable laws and any specification agreed upon by the parties, and shall otherwise meet the applicable specifications;
- 15.1.5. it holds all rights, titles, and interests, as well as all authorizations, approbations, licenses, certifications and/or permits required to supply the Goods and meet each of its obligations;
- 15.1.6. it has the experience, expertise and personnel to fulfill its obligations in accordance with the timelines and other terms of the Agreement and these Terms and Conditions;

- 15.1.7. it owns exclusively and has good title to the Goods allowing its use, handling, modification and combination with other material; to the best of its knowledge the use, handling, modification and combination with other material will not infringe third parties' Intellectual Property rights or applicable law;
  - 15.1.8. it has not come under investigation by regulatory authorities in connection with the manufacture of the Goods and the Goods have not subject to any proceeding, litigation process, claim or outstanding decree, order, judgment, agreement or stipulation that restricts or is likely to restrict the development, use or transfer thereof, and there is no reason to believe that the Goods could be subject to any of the foregoing occurrence that restricts their use or transfer thereof.
- 15.2. Supplier will notify Buyer as promptly as practicable should any representation set forth in subsection 15.1 become inaccurate or no longer true.

## 16. TERMINATION

- 16.1. Notwithstanding anything in these Terms and Conditions or any Agreement, Buyer may at any time and without payment of any penalty or damages, terminate the Agreement(s): (i) upon at least thirty (30) days' notice in writing to Supplier specifying therein the effective date of such termination; OR (ii) effective immediately in the case of an event of default by Supplier. For the purposes of these Terms and Conditions, an "event of default" shall mean any of the following: (i) a breach of a material provision of these Terms and Conditions or Agreement by Supplier, including without limitation, failure by Supplier to: (a) supply Goods when and as required in accordance with the Agreement and these Terms and Conditions, (b) maintain completion dates; (c) supply a sufficient number of properly skilled workers or sufficient material to supply the Goods with diligence; and (d) honour any of its covenants or undertakings under the Agreement; (ii) Supplier ceases or threatens to cease conducting business, or in the reasonable opinion of Buyer will be unable to continue conducting business or a substantial part of its business activities; (iii) any petition, proceeding or other action under any law relating to bankruptcy or insolvency is filed or instituted by or against Supplier; or (iv) Supplier subcontracts the performance of any of its obligations under the Agreement without the prior written consent of Buyer or makes an unauthorized assignment of the Agreement.
- 16.2. Upon termination of the Agreement(s):
- 16.2.1. Buyer shall have the right to enter upon the premises of Supplier and take possession of all materials and appliances therein and finish the supply of the Goods by any method Buyer deems advisable; and
  - 16.2.2. Buyer's liability shall be limited to payment to Supplier of a final invoice for amounts owing for conforming Goods delivered prior to the date of termination. For greater certainty, no severance payment or similar compensation shall be paid to Supplier upon termination of the Agreement by Buyer.
- 16.3. Despite the termination or expiry of such Agreement(a), the Parties shall remain bound by all rights and obligations, which by their nature should survive the termination of the Agreement, including this Section as well as Section 10 (Inspections and Audit Rights), Section 15 (Representations and Warranties), Section 18 (Confidentiality), Section 19 (Liability and Insurance) and Subsection 20.5 (Applicable Law and Dispute Resolution).

## 17. INTELLECTUAL PROPERTY

- (a) The Parties agree that unless expressly provided otherwise in the Agreement:
- (i) all Intellectual Property provided by or otherwise belonging to either party prior to the effective date of the Agreement and all rights, titles, interests and improvements thereto shall remain the sole property of such party; more particularly and without limiting the generality of the foregoing, the parties understand and agree that the Goods as well as any Specification or other form of Intellectual Property provided by Buyer to Supplier shall remain the sole and exclusive property of Buyer;
  - (ii) all foreground Intellectual Property created in connection with Buyer's products – including any improvement of any products Intellectual Property that could not be used without infringing Buyer's Intellectual Property rights, as well as any improvements of a form of Intellectual Property for which a party could obtain a distinct patent or seek distinct Intellectual Property protections – shall be Buyer's sole and exclusive property; Supplier shall not be granted any rights, titles or interests whatsoever with respect to such foreground Intellectual Property other than as applicable the right to use it for the purposes of performing its obligations as set forth in the Agreement and hereby assign all its rights and renounce to any moral rights over such Intellectual Property to the Buyer.
  - (iii) all foreground Intellectual Property (other than the one described in the previous paragraph) and created by one party shall be its sole and exclusive property, while all rights over any Intellectual Property created jointly by the Buyer and the Supplier shall be the joint property of both parties taking into account the relative inventive contributions of the inventors of each parties and the rights over such Intellectual Property shall be governed by the agreement to be negotiated in good faith between the Buyer and the Supplier. Should the parties fail to reach an agreement, they shall refer to the dispute resolution mechanism set out in Subsection 20.5.

## 18. CONFIDENTIALITY

In the course of performing any Agreement, Confidential Information may be disclosed or rendered available by Buyer to Supplier. To that end Supplier agrees in its name and on behalf of its personnel or its agent: **(i)** to preserve the confidential nature of the Confidential Information and to treat such information with at least the same degree of care that it uses to protect the confidentiality of its own most sensitive information, and in any event with no less than a reasonable standard of care required to protect information of similar nature; **(ii)** to use the Confidential Information solely to meet and discharge its obligations provided for in any Agreement; **(iii)** not to use, disclose or otherwise render accessible Confidential Information to anyone other than its personnel on a "need-to-know" basis; **(iv)** to promptly inform Buyer after becoming aware of any disclosure required pursuant to applicable law or any loss or theft, any unauthorized access or use or any event threatening the confidentiality of the Confidential Information, and to take all reasonable measures requested by Buyer or required to avoid or minimize any potential or actual damage or loss resulting from the foregoing; and **(v)** upon Buyer's request and in accordance with its instructions to promptly cease to use its Confidential Information and to safely return or irrevocably destroy all such Confidential Information, as attested in writing by an executive of Supplier upon request from the Buyer or upon termination of any Agreement. Notwithstanding the foregoing, Supplier shall be entitled to keep one copy of the Confidential Information, as required to comply with its legal obligations provided that such copy remains subject to the provisions of this Section 16.1 and that it is retained in Supplier's legal department under restricted access. The obligation under this Section 16.1 shall last for the duration of the term and for ten (10) years after termination of the Agreement, if any, and, in the case of information that constitutes a trade secret, the present obligation shall continue to apply until the relevant information no longer constitute a trade secret. Supplier recognizes and agrees that the unauthorized use or disclosure of

Confidential Information in violation of the Agreement, if any, or these Terms and Conditions may cause severe and irreparable harm to Buyer for which monetary damages would not be adequate remedy, and accordingly that the Buyer shall be entitled to seek from any court of competent jurisdiction injunctive relief, whether preliminary or permanent, as well as any other relief permitted by applicable law and may obtain that relief without making a showing of irreparable harm.

## **19. LIABILITY AND INSURANCE**

### **19.1. Indemnification**

Supplier agrees to be responsible and to assume liability for its acts, omissions and negligence and breach of the Agreement, these Terms and Conditions or applicable laws, and for those for whom it is in law responsible including its personnel and its permitted subcontractors if any, arising out of or as a result of, or in connection with the conduct of the Agreement, and agrees to defend, indemnify and hold the Buyer harmless from any such liability. More particularly and without limiting the generality of the foregoing, Supplier shall defend, indemnify and hold Buyer harmless for any liability arising from the use of or caused by the Goods supplied under this LTPA or any Order including for any manufacturing defect of or non-conforming Goods, unless such liability is caused by the Buyer's breach of this LTPA or of applicable laws, or its fault or negligence.

### **19.2. Indirect Damages**

None of the Parties shall be liable to the other for any loss, whether indirect or not objectively foreseeable unless (i) caused by its intentional or gross fault; or (ii) an exception to such limitation of liability is provided for under applicable law; or (iii) an infringement proceeding or similar Intellectual Property claims is made; (iv) such losses result from a failure to comply with Section 15 (Representations and Warranties); or (v) by a failure to comply with its confidentiality obligations.

### **19.3. Insurances**

Supplier shall maintain at all time policies of insurance in the amounts and of the types reasonably appropriate for the conduct of their respective businesses. Proof of insurance shall be given upon Buyer's request.

## **20. MISCELLANEOUS**

### **20.1. Entire Agreement and Amendment**

These Terms and Conditions shall constitute with any Agreement the entire agreement between the Supplier and the Buyer as to any specific provision of Goods agreed upon and supersedes all prior agreements, understandings, negotiations and discussions with respect to the subject matter hereof whether oral or written, and any amendment must be made in writing and signed by all Parties.

### **20.2. Publication and use of names**

Supplier shall not make public statements about its provisions of Goods or These Terms and Conditions and applicable Agreement unless otherwise expressly authorized by Buyer and shall not be entitled to publish any data pertaining to or results obtained in connection with the performance of the Agreement. None of the parties shall use (or authorize others to use) the names, symbols, trademarks, trade names, logos or other distinctive names or symbols or

adaptations belonging to the other party, or the name of its employees, representatives, directors and officers without the prior written authorization of that party, provided that Buyer shall be entitled to refer to Supplier as Buyer's Goods provider.

### **20.3. Assignment**

The Supplier shall not assign, delegate, license, subcontract or otherwise transfer in whole or in part any Agreement or Agreements or any right or obligation provided for in such agreements without Buyer's prior written consent. Any of the foregoing made in contravention to this Section shall be void and of no effect. The Buyer shall have the right to assign, delegate or otherwise transfer in whole or in part this Agreement, if any, or the Agreement(s) or any right or obligation provided for in such agreements without Supplier's consent.

### **20.4. Change in Control**

- 20.4.1. In the event of a change of control at Buyer, Buyer shall have the right (but shall be under no obligation) to terminate the Agreement. Buyer will inform Supplier of its intent, if any, to terminate the Agreement. Such notice could be given at any time prior to this change of control taking place or within ninety (90) days after the occurrence of such change of control. Likewise, in the event of a change of control at Supplier, Supplier will inform buyer within five (5) days of such change of control. Buyer will respond within ninety (90) days to inform Supplier if the Agreement is terminated.
- 20.4.2. For purposes of these Terms and Conditions, a "change of control" shall mean: (i) any event in which a person or group of persons not beneficially owning more than fifty percent (50%) of the voting power of the outstanding securities of Supplier (or of Buyer as the case may be) acquires or otherwise becomes the beneficial owner of securities of Supplier (or of Buyer as the case may be) representing more than fifty percent (50%) of the voting power of the then outstanding securities of Supplier (or of Buyer as the case may be) with respect to the election of directors of Supplier (or of Buyer as the case may be); or (ii) the consummation of a merger or consolidation of Supplier (or of Buyer as the case may be) with any other corporation, other than a merger or consolidation which results in the voting power of the outstanding voting securities of Supplier (or of Buyer as the case may be) immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of Supplier (or of Buyer as the case may be) or such surviving entity outstanding immediately after such merger or consolidation;

### **20.5. Applicable Law and Dispute resolution**

- (iv) The Parties agree that the Agreement and these Terms and Conditions shall be construed and determined in accordance with the laws of Canada and the Province of Quebec excluding its private international law rules and the U.N. Convention on the International Sale of Goods that could lead to the application of another jurisdiction's law.
- (v) Any controversy, claim or dispute between Supplier and Buyer, directly or indirectly, concerning these Terms and Conditions or the Agreement or the breach hereof, or the subject matter hereof, shall be first deferred to parties' respective top executive officers for a thirty (30)-day period. If the disagreement cannot be resolved within that period of time, then such dispute or disagreement shall be finally settled by arbitration under the rules of conciliation and arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said rules. The place of the arbitration shall be Montreal, Quebec, Canada, and the language to be used in the arbitral proceedings shall be English.

The results of such arbitration shall be conclusive and binding, provided, however, that both parties shall have the right to apply to a court of competent jurisdiction for such equitable relief as is necessary to preserve and enforce their rights under these Terms and Conditions or the Agreement. Notwithstanding any of the foregoing provisions, either party may join the other party to any action, suit or proceeding with respect to which the party seeking such joinder is a defendant, if the other party is required to defend, indemnify, and hold harmless such defendant in accordance with the terms and provisions hereof.

**20.6. Duty to Proceed**

Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to the Agreement shall excuse Supplier from proceeding.

**20.7. Force Majeure**

In the event that the Supplier is unable to fulfill its obligations hereunder due to causes beyond its control including, fire, flood, extreme climatic conditions or other acts of God, strikes, picketing, lockout or other labour disputes and/or governmental acts for more than fifteen (15) consecutive days, then Buyer shall be entitled to terminate the Agreement(s), or to request that Supplier retain at Supplier's costs the services of a third party to perform such obligations provided Supplier shall remain responsible for ensuring that such subcontractor perform the obligations as provided for herein and liable for any failure to do so.

**20.8. Severability**

If any provision of these Terms and Conditions or the Agreement(s) be in whole or in part invalid, unenforceable or in conflict with any applicable law, such provision (or part of provision) shall be deemed: (i) to be independent of the remainder of these Terms and Conditions/Agreements and to be severable from it, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of these Terms and Conditions/Agreement(s), so that all rights and obligations be construed and enforced as if it did not contain the particular provision; and (ii) to be applicable and enforceable to the fullest extent permitted by law against any person and in any circumstance except those as to which it has been held or rendered invalid, unenforceable or illegal.

**20.9. Setoff**

Buyer may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under the Agreement or the Agreement.

**20.10. Remedies**

Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

**20.11. No Waiver**

No failure of any Party to exercise any right under, or to require compliance with, the Agreement, or knowledge of past performance at variance with the Agreement, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with

respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

**20.12. Relationship of the Parties**

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.