

## **Terms and Conditions of Purchase (these “Terms and Conditions”)**

### **1. DEFINITIONS**

“Affiliate” means an organization which is directly or indirectly controlled by, in Control of, or under common control with, either Supplier or Purchaser as appropriate.

“Agreement” means the contract between Purchaser and Supplier consisting of, as appropriate, a Purchase Agreement, a Purchase Order issued by Purchaser, these Terms and Conditions, the Specifications, and any other documents (or parts thereof) specified in the foregoing or otherwise expressly incorporating these Terms and Conditions.

“Control” means the ownership of more than 50% of the voting stock of any organization or the legal power to direct or cause the direction of the general management of either Supplier or Purchaser as appropriate.

“Applicable Laws” means all relevant statutes, regulations, court decrees and orders of any governmental entity or agency having jurisdiction, including those pertaining to environmental and occupational health and safety standards, pharmaceutical, nutritional and cosmetic products, welfare, production, storing, handling and delivery of the Goods and Services.

“Data Privacy Directive” means (i) the European Union Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (ii) the Canadian Information Protection and Electronic Documents Act, and (iii) any other similar national or international law, treaty or enactment having the force of law.

“Good Manufacturing Practices” means, collectively, the regulations, codes, and guidelines for the manufacture of drugs, medical devices, diagnostic products, food products, active pharmaceutical ingredients and related products, as applicable to the Goods and Services from time to time during the term of performance of the Agreement.

“Goods” means all (or any) of the products goods covered by the Agreement, including without limitation raw materials, processed materials or fabricated products.

“Improvement” means any improvement to the Goods or Services made pursuant to the Continuous Improvement Program under Condition 31.

“Intellectual Property Rights” means any registered and unregistered trademarks, trade names, brand names, logos, trade dress, registered and unregistered designs, patents, and any applications for registration thereof, and any know how, copyright and database rights and all other intellectual property rights of any sort or nature wherever subsisting.

“Losses” means, collectively, any and all losses, costs, expenses, loss contingencies, claims, demands, suits, proceedings, damages, judgments and settlements of all sorts, including all fees and expenses of counsel and costs of court.

“Packaging” means bags, cases, carboys, cylinders, drums, pallets and other containers. “Product” means an item or items of the Goods.

“Purchaser” means Drug Plastics And Glass Company, Inc. and any other legal entity acquiring Goods or Services under the Agreement.

“Purchase Agreement” means a supply, manufacturing, consulting, construction, renovation, services or other similar agreement signed by both Supplier and Purchaser providing for the purchase of Goods or provision of Services, regardless whether it expressly incorporates these Terms and Conditions.

“Purchase Order” means a purchase order issued to Supplier by Purchaser for Goods or Services which may be attached hereto or on the reverse hereof, or in electronic form, in whatever form, regardless whether it is signed by Supplier.

“Services” means the Services covered by the Agreement.

“Specification” means, collectively, all specifications detailed in a schedule attached or to be attached to the Agreement, or as separately documented by Purchaser in writing, which sets out the design, requirements, features, functions and/or performance required of the Goods and Services.

“Supplier” means the person, firm (or any individual partner thereof), or company to whom the Purchase Order is addressed or that is Supplier of Goods or Services under the Agreement.

“Taxes” means any and all applicable sales and use taxes, transaction privilege taxes, excise taxes, tangible or intangible personal property taxes, or value added taxes (“VAT”) on the sale or measured by the sales price of the Goods or Services.

## **2. STATUS OF TERMS AND CONDITIONS**

2.1 These Terms and Conditions shall apply to all contracts for the purchase of Goods or Services by Purchaser from Supplier to the exclusion of all other terms and conditions, including any terms or conditions which Supplier may purport to impose or which appear upon any web site, quotation, sales document, invoice, order acknowledgement, correspondence or other communication issued by Supplier, irrespective of their date of communication to Purchaser, save that the terms and conditions and other matters appearing on the Purchase Order or in a Purchase Agreement in respect of the Goods or Services shall, wherever the same are incompatible with these Terms and Conditions, to that extent and no further, overrule these Terms and Conditions.

2.2 This paragraph 2.2 shall apply when there is no Purchase Agreement signed by both parties that covers the Goods or Services in question. Supplier’s formal or informal acceptance of the Purchase order, or commencement of work on the Goods or Services or shipment of such Goods, whichever occurs first, shall be deemed an effective mode of acceptance of a Purchase Order. Any acceptance of a Purchase Order is limited to acceptance of the express terms contained on the face and back thereof and to these Terms and Conditions. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of Purchaser’s offer is hereby objected to and rejected,

but such proposals shall not operate as a rejection of Purchaser's offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the Goods or Services, but shall be deemed a material alteration thereof, and Purchaser's offer shall be deemed accepted by Supplier without said additional or different terms. If the Purchase Order shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained on the face and on the back of the Purchase Order or otherwise intended by Purchaser to be incorporated by reference therein, including these Terms and Conditions.

2.3 Purchaser shall not be liable in respect of any Purchase Order(s) or instructions other than those issued or confirmed on its official, duly authenticated Purchase Order documents.

### **3. DELIVERY OF GOODS AND PROVISION OF SERVICES**

3.1 Unless otherwise instructed in writing by Purchaser, all Goods must be delivered and all Services must be performed at the time and place specified in the Agreement. Supplier shall supply Purchaser with details of the anticipated lead times between placing an order and delivery of any Goods and Supplier shall keep Purchaser informed of progress. If Goods or Services are incorrectly delivered Supplier shall be responsible for all additional expenses incurred in delivering them to the correct point specified in the Agreement or subsequently advised in writing by Purchaser. The quantity specified in the Agreement may not be changed without Purchaser's prior written consent. Quantities delivered in excess of those stated in the Agreement may not be accepted.

3.2 Time shall be of the essence in relation to the performance of any and all of Supplier's obligations pursuant to the Agreement.

### **4. PASSING OF TITLE AND RISK IN GOODS**

4.1 Title to and risk in Goods shall remain with Supplier until they are delivered at the place specified in the Agreement and a nominated employee of Purchaser signs a delivery note, packing slip or bill of lading, at which point they shall pass to Purchaser.

4.2 Neither payment by, nor passage of title or risk in the Goods or the Services to, Purchaser shall be deemed to constitute acceptance of the Goods or the Services.

### **5. CONTRACT PRICE, TERMS OF PAYMENT AND INVOICING**

5.1 The initial Prices for the Goods and Services are set out in the Agreement, or its Schedules, or the Purchase Order, as applicable. These Prices shall apply for the period specified in the Agreement subject to any reduction resulting from the Continuous Improvement Program, and any other adjustments expressly provided for in a Purchase Agreement.

5.2 No Purchase Order may be filled at prices higher than those last charged or quoted for the same Goods or Services, without notification and acceptance of the increased prices, except as may be expressly provided in a Purchase Agreement. Supplier warrants that the prices hereunder are and shall at all times be not less favorable than those currently extended to any other customer for the same or similar Goods or Services in similar quantities. If Supplier reduces its price for such Goods or Services during the term of the Agreement, Supplier agrees to reduce the prices stated herein correspondingly. Supplier warrants that all prices shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, Packaging, labeling, custom duties, Taxes, storage, insurance, boxing and crating.

5.3 The price (which shall be a firm fixed price unless otherwise expressly agreed), shall be exclusive of VAT, and inclusive of all other Taxes, Packaging and other related charges and inclusive of delivery and insurance. Except as may be expressly provided in the applicable Purchase Agreement, any increase in the price for any reason shall be subject to the express prior written consent of Purchaser.

5.4 Provided the Goods and Services have been delivered to Purchaser, payment shall be made by Purchaser to Supplier for Goods and Services which comply with the Agreement. Payment shall be made within 30 days from receipt of invoice or unless otherwise stated in this Condition 5. . VAT where applicable shall be shown separately on all invoices as a strictly net extra. Purchaser reserves the right to set off any sums that Supplier or its Affiliates may owe to Purchaser or its Affiliates.

5.5 The correct Purchase Order number and any other information reasonably required by Purchaser must be quoted on all invoices, and Purchaser shall accept no liability whatsoever for invoices, packing sheets, bills of lading or other communications which do not bear such Purchase Order numbers.

5.6 To ensure payment in accordance with the above procedure all invoices must be received at the invoice address shown on the Purchase Order.

5.7 Supplier must provide one invoice per purchase order, per vehicle load. Supplier should bill only for product received into the warehouse. Product deemed as unauthorized Goods or unauthorized deliveries must not be included on the invoice and will not be paid for by Purchaser. If at time of delivery only a portion of the Purchase Order is filled, Purchaser will account for the discrepancy and may issue a new Purchase Order for the balance of the product and may follow remedies as outlined in this Agreement.

5.8 For FOB Destination shipments, Supplier is responsible for invoicing Purchaser for payment of freight. Charges should be submitted to Purchaser as a separate line item on the invoice. Purchaser will not be responsible for any other shipment charges (sort and segregate, appointment notification, etc.)

5.9 All payment terms will be computed from the later of either the date of receipt of a correct invoice or conforming Goods or Services. In the event of any discrepancy, payments will be adjusted to correct invoice errors and be subject to remedies herein. In addition, Purchaser shall have the right to deduct from payment:

5.9.1 Any reduction in applicable freight rates, customs duties, import taxes, excise taxes, and/or sales taxes from those in force on the date of any Purchase Order; and

5.9.2 The costs of any products used by Purchaser for corporate product testing which may include periodic or complaint driven quality tests.

5.10 A copy of a statement of adjustment notice indicating corrections made and any administrative fee deductions will be enclosed with a payment. In such an instance, Purchaser will not pay any finance or late charges. All questions regarding past due invoices or payment discrepancies should be addressed according to the procedures outlined in the Supplier Relationship Attachment.

5.11 Purchaser reserves the right to bill Supplier at the rate of \$50 per hour for any and all clerical work required of Purchaser to research, coordinate with Supplier, validate, and otherwise correct erroneous invoices and invoices otherwise not meeting Purchaser's reasonable requirements.

5.12 After forty-five (45) calendar days from original receipt of the payment, requests for adjustments will not be investigated and invoices shall be considered paid in full.

## **6. WARRANTIES REGARDING GOODS**

6.1 Supplier expressly warrants that

6.1.1 all Goods shall conform to the Agreement (including all Specifications), and all appropriate standards, shall be new, and shall be free from defects in design, material or workmanship;

6.1.2 all Goods shall conform in all respects to all samples provided and to all statements and claims made on the containers, labels and/or advertisements for such Goods and all proposals, quotations, web sites and other marketing materials;

6.1.3 all Goods shall be adequately Packaged, marked and labeled;

6.1.4 all Goods shall be new, merchantable, and fit and appropriate for the ordinary purpose for which such Goods are normally used and, if Supplier knows or has reason to know the particular purpose for which Purchaser intends to use the Goods, fit for such particular purpose;

6.1.5 Supplier is aware of Purchaser's business requirements, needs and intended uses for the Goods and is aware that Purchaser is relying on Supplier's skill and judgment in providing the Goods due to Supplier's superior knowledge and expertise with respect thereto, and the Goods shall satisfy such requirements and be fit for such intended uses, including without limitation, compatibility with Purchaser's systems and requirements; and

6.1.6 shall comply with all implied warranties under Applicable Law

6.2 Any inspection, test, acceptance or use of the Goods by Purchaser shall not affect Supplier's obligation under its warranties, and all such warranties shall survive inspection, test, acceptance and use. Supplier's warranties shall run to Purchaser, its successors, assigns and customers, and users of products sold by Purchaser.

6.3 The Goods shall be supplied with adequate instructions as to use and, if applicable, “use-by” date.

6.4 Supplier shall not make any changes in (including the source of) raw materials, purchased components, packaging materials, labeling, formulations, specifications, manufacturing site, manufacturing equipment, manufacturing processes, manufacturing conditions, product composition, quality control test methods or testing procedures for the manufacture of products without the prior written consent of Purchaser. Supplier shall provide Purchaser with advance notice of any such proposed changes accompanied by testing results and data to prove equivalency of any proposed changes.

## **7. REJECTION, REPAIR AND REPLACEMENT OF GOODS**

7.1 In the case of Goods not meeting the warranties contained herein or otherwise not conforming to the Agreement, Purchaser may, at its discretion, do any or all of the following, in addition to any other remedies available to Purchaser under applicable law, including cover:

7.1.1 require Supplier as soon as reasonably practicable to either repair or replace the Goods at Supplier’s works, or refund to Purchaser the purchase price of all Goods which do not conform to the Agreement. Repairs, replacements, and any refunds shall themselves be subject to the obligations in this Agreement;

7.1.2 in the case of defective delivery, require Supplier to promptly reimburse Purchaser in respect of any cost, including but not limited to freight, clearance, duty and storage charges incurred by Purchaser; and

7.1.3 purchase Goods elsewhere which nearly as practicable accord with the Agreement and any extra expense thus incurred shall be paid by Supplier to Purchaser.

7.2 In the event of a rejection in accordance with Condition 7.1 above Purchaser shall notify Supplier in writing, and the payment obligation in relation to any such delivery shall be suspended forthwith.

## **7.3 CUSTOMER COMPLAINTS AND PRODUCT RECALL**

7.3.1 Supplier shall ensure that adequate manufacturing, dispatch and analytical records are kept and made available to Purchaser in order to assess the quality and destination of the Product in the event of a product complaint, suspected defect or demand by a governmental unit or other party for a product recall.

7.3.2 If Purchaser requires access to any records held by Supplier or a third person Supplier shall facilitate immediate access to such records.

7.3.3 Supplier shall notify Purchaser’s Director of Quality Control immediately by telephone and in writing immediately upon becoming aware of any problem including but not limited to:

- a. where any Product or its labeling may have been mistaken for or applied to another product; or
- b. where any Product may be affected by physical, chemical, environmental, bacteriological or other contamination, significant chemical, physical or other change or deterioration or stability failures;
- c. where any Product is the subject of a complaint by a third party or customer; or
- d. where any Product may not comply with the Specification.

7.3.4 If any of the circumstances described above arise, whether notified to Purchaser or not, Supplier shall take at Supplier's cost all such acts as Purchaser or its customer or any applicable government agency or court having jurisdiction may direct and if Purchaser or its customer or such agency or court deems that a Product recall is required, the recall strategy shall be developed by Purchaser and fully followed by Supplier including with strict regard to timing requirements. All costs of such recall shall be borne by Supplier if the need for the recall is necessitated by a failure on the part of Supplier to comply with all its obligations under this Agreement or through any negligence on the part of Supplier.

7.3.5 Upon notification from Purchaser that it has received a complaint in respect of any Product, Supplier shall promptly and at its own expense conduct all such necessary internal investigations as may be necessary to determine the validity of such complaint. The findings of such investigations shall be reported in writing to Purchaser within 5 days of the original notification. Purchaser shall thereafter respond to the complainant and provide a written copy of such response to Supplier and Supplier shall thereupon carry out any actions which Purchaser may require in connection therewith.

## **8. STANDARD OF SERVICES**

8.1 Supplier warrants and represents as follows to Purchaser with respect to Services performed by Supplier and any sub-contractor:

8.1.1 All Services shall be performed in a good and workmanlike fashion and with all due speed, care, skill and diligence, in accordance with the Agreement, with current industry standard codes of practice, and the highest standards prevailing in Supplier's industry;

8.1.2 Supplier shall furnish such timetables and other work orders for the Services as Purchaser may reasonably require within 30 days of receipt of the Purchase Order;

8.1.3 Supplier's work orders shall give all appropriate and necessary details of its proposals for carrying out the Services within the time stipulated indicating the sequence and timing of all operations forming part of the Services; and

8.1.4 Supplier shall ensure that all of its personnel and sub-contractors are suitably qualified, certified and licensed to perform the Services and that all necessary licenses, building or other work permits or other authorizations have been obtained.

8.2 If any materials which are required by Supplier for the provision of the Services are not delivered fully in accordance with the Agreement, Supplier shall immediately effect correct delivery and shall be responsible for any additional costs and expenses incurred by all parties in so doing.

8.3 Purchaser shall have the right exercisable during the performance of the work or Services to suspend any payment obligation in respect of the Services if the performance does not conform to the Agreement or is delayed.

8.4 If the Services do not conform to the Agreement, Purchaser shall have the right to purchase Services from elsewhere; and any extra expense incurred shall be paid by Supplier to Purchaser. Before exercising such right to purchase the Services from an alternative supplier Purchaser shall to the extent reasonably practicable give Supplier an opportunity to correct the work or Services in respect of which payment was cancelled with Services.

8.5 Supplier shall furnish all materials, supplies and labor called for under the Agreement. Supplier shall prosecute the work in a prompt, efficient and workmanlike manner and shall not delay or otherwise interfere with the business of Purchaser or any other party. Supplier shall reimburse Purchaser for any and all liquidated and/or actual damages that may be assessed by any contractor for any failure by Supplier's to perform this Agreement, but such reimbursement shall not release Supplier from any other obligations. If Supplier fails to perform in any manner hereunder and does not cure the failure within five (5) days after request by Purchaser, Purchaser may, without prejudice to any other right or remedy, remedy the situation at Supplier's expense including attorney's fees. Supplier shall also require its agents or subcontractors, if any, who may enter upon Purchaser's premises to maintain similar insurance in accordance with Condition 20, and to agree to furnish Purchaser, if requested, certificates or adequate proof of such insurance.

8.6 Supplier shall see that Purchaser's property is kept free of all mechanics' liens, and similar claims and encumbrances on account of the work. If advance waivers of mechanics' lien are allowed under Applicable Laws and if required by Purchaser and at the option of Purchaser, (i) Supplier shall execute a waiver of liens, release of liens, contractor's affidavit or release of liens, and/or affidavit of payment of debts and claims, in the form prescribed by Purchaser, or (ii) Supplier shall wait until it has received notice from Supplier that a waiver of liens has been filed with the prothonotary, clerk of court or other appropriate office in the county where the real property to which the Services are to be rendered is located before such Services are started upon the grounds, structures, or utilities constituting such real property. If such advance waivers are not allowable under Applicable Laws and/or Purchaser does not otherwise require such advance waivers, Supplier shall provide upon submittal of an application for payment or any other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Services, to the extent and in such form as may be designated by Purchaser. If a contractor or other person or entity entitled to assert a lien against Purchaser's property refuses to furnish a release or waiver required by Purchaser, Supplier may furnish a bond satisfactory to Purchaser to indemnify Purchaser against such lien. If such lien remains unsatisfied after payments are made by Purchaser, Supplier shall indemnify Purchaser for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.



## **9. PACKAGING**

Supplier shall package and label the Goods in a manner suitable for transit and storage at no cost to Purchaser. Purchaser will not pay for or return Packaging materials unless previously agreed between the parties. Packaging shall comply with Applicable Laws. Supplier shall investigate potential environmental improvements to Packaging and shall, where practicable, use minimal Packaging, recyclable Packaging and recycled materials as appropriate.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 Purchaser retains all Intellectual Property Rights in, and ownership of all materials, plans, drawings, Specifications, patterns and/or designs provided by Purchaser to Supplier. All such materials shall be used solely to perform the Agreement, and they shall all be returned at any time in good condition to Purchaser at Purchaser's request or on expiration of the Agreement, on which shall not retain any copies of such materials in its files or electronic data storage systems, or any summaries, extracts, or analysis thereof.

10.2 Where Goods are made to Purchaser's Specification, model, or plans, the Intellectual Property Rights in the Goods in so far as they relate to the Specification, model, or plans, and any improvements or developments thereof shall be the absolute property of Purchaser, and Supplier shall assign all such Intellectual Property Rights to Purchaser when such assignment is necessary.

10.3 Purchaser shall own all rights throughout the world to any Intellectual Property Rights and to all ideas, inventions, products, programs, procedures, formats and other materials of any kind created, developed or worked on for Purchaser, all of which shall be "works for hire" as defined by applicable intellectual property laws. Supplier shall take such actions and execute such documents as Purchaser may reasonably request to warrant and confirm our ownership of such rights and to transfer and assign them to Purchaser.

10.4 Supplier represents, warrants and covenants that Purchaser's use of any Goods or Services does not and shall not violate or in any way infringe upon the Intellectual Property Rights or other interests of third parties, including property, contractual, employment, non-disclosure or other rights. Supplier shall defend and indemnify Purchaser and its Affiliates and hold them harmless against any cost, loss, liability or expenses (including reasonable attorney fees) arising from claims for infringement of any Intellectual Property Rights whatsoever of any third party arising out of the possession, use or sale of any Product or Services; provided that any settlement proposed by Supplier that affects Purchaser or Purchaser's Affiliates shall require Purchaser's written approval, which shall not be unreasonably withheld. This indemnity shall not apply to any infringement which is due to Supplier having followed any specifications or any design or instruction furnished or given by Purchaser or to the use of the Goods or Services in a manner or for a purpose not specified by or disclosed to Supplier.

10.5 If the Intellectual Property Rights relating to the Goods and Services are held by the courts to infringe a third party's rights, and their use is enjoined by that third party, Supplier shall have the option and at its expense to procure for Purchaser the right to continue using the Goods or Services, or replace the Goods with non-infringing Goods or Services, or modify the Goods or Services so that they become non-infringing without detracting from their overall performance

and functionality. If Supplier is not able to accomplish one of the foregoing, Purchaser shall have the right to rescind the Agreement as to any or all Goods and Services affected by the alleged infringement, in addition to any and all other remedies, and receive a full refund of the purchase price, in the case of Goods, and an equitable refund of a portion of the purchase price, in the case of Services which have been fully enjoyed by Purchaser for a portion of the time contemplated by the Agreement.

## **11. CONFIDENTIALITY AND PUBLICITY**

Supplier shall, and shall procure that its employees and sub-contractors shall, keep secret any and all Intellectual Property Rights, Specifications and other information of a commercial, financial, strategic or technical nature disclosed to Supplier by Purchaser for the purpose of the Agreement, and shall not use or disclose such information to any third party without Purchaser's prior written consent. Supplier shall not without Purchaser's prior written consent disclose, copy, publicize or publish the existence of the Agreement or any information related to the Agreement including the name of Purchaser, the Goods, Services, the prices and the place of delivery or performance.

## **12. FORCE MAJEURE**

12.1 Neither party shall be liable for, nor be deemed to be in default, on account of any delay in completion or the performance of any other act under the Agreement due to circumstances which could not have been contemplated by the parties at the time of contracting and which are beyond the party's reasonable control ("Force Majeure"), provided that the party seeking an excuse of performance hereunder shall notify the other with all possible speed specifying the cause and probable duration of the delay or non-performance and shall use all commercially reasonable efforts to minimize the effects of such delay or non-performance.

12.2 If the performance by either party of any of its obligations under the Agreement is prevented or delayed by Force Majeure:

12.2.1 for a consecutive period in excess of 5 working days, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances; or

12.2.2 For a period in excess of 60 days cumulatively or consecutively, then the other party shall in its discretion have the right to immediately terminate the Agreement upon written notice.

12.3 If Supplier is unable to supply the Goods and Services in accordance with the terms of this Agreement for reasons of Force Majeure or otherwise Supplier shall use its best efforts to source the same quantity and quality of Products from an alternative validated supplier, approved by Purchaser ("Third Party Supplier"). Supplier shall notify Purchaser of the identity of Third Party Supplier and the nature of the Goods and Services available, (as soon as reasonably possible) prior to the delivery date, and Purchaser at its sole discretion shall elect whether to authorize the use of Third Party Supplier by Supplier.

### **13. COMPLIANCE WITH STATUTES AND REGULATIONS; NO LITIGATION**

13.1 Supplier warrants that the Goods and Services shall comply with all Applicable Laws now or hereafter in effect.

13.2 Supplier shall provide evidence of compliance with Applicable Laws (including, permits, inspection reports, certificates of analysis etc.) promptly on request and in any event within a reasonable time. Supplier shall ensure that its sub-contractors comply with this Condition.

13.3 Supplier shall use its best efforts to comply with all reasonable requests of Purchaser to minimize Purchaser's compliance costs in respect of applicable data protection, health, safety, environmental and producer responsibility obligations.

13.4 Supplier represents and warrants that there are no pending or, to the knowledge of Supplier, threatened lawsuits concerning any aspect of the subject matter of the Agreement or that may impair Supplier's right or ability to perform under the Agreement or Purchaser's enjoyment of the benefits thereof.

13.5 Supplier and its subcontractors shall abide by accepting our purchase order, Supplier represents to Purchaser and agrees that Supplier currently is and shall remain in compliance with all applicable laws and regulations relating to equal employment opportunities. This representation by Supplier is in accordance with the Purchaser's policy to employ, and to advance in employment, qualified persons without regard to their age (40 and over), sex, race, color, religion, national origin, ancestry, disability, and veteran status, or any other basis prohibited by law. Purchaser remains strongly dedicated to the principles of non-discrimination and equal employment opportunity and is further committed to act affirmatively to provide equal employment opportunity to all qualified individuals.

13.6 This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

### **14. INSPECTION**

14.1 Purchaser, and any third party it appoints on its behalf, shall have the right upon prior notice to inspect and carry out any tests, or batch sampling, it wishes on all Goods at Supplier's premises and the premises of any sub-contractors and on any work pursuant to Services provided. Where pre-shipped inspection is specified, Supplier must, at its expense facilitate the same and provide any or all relevant certificates of analysis.

14.2 Any inspections, tests, approvals or acceptance made or given on behalf of Purchaser in relation to the Goods or Services shall not relieve Supplier from its obligations or liabilities

under the Agreement.

14.3 Supplier shall, and shall ensure that its sub-contractors shall, grant a right of access to Purchaser and any third party it appoints in order to inspect and test the Goods or work for conformance to with the Agreement relevant environmental, occupational health and safety legislation and other requirements such as Purchaser may reasonably impose.

## **15. DATA PRIVACY DIRECTIVES**

The parties warrant that they each have legal authority in the country in which they are established for the purpose of processing personal data (as defined in the Data Privacy Directives) and shall not process the personal data of staff, employees and/or sub-contractors working for the other to which they have been granted access, or which have otherwise been made available for the purpose of the Agreement, except in accordance with the Applicable Laws implementing the Data Privacy Directive applicable to the parties. Each party agrees to indemnify the other in consequence of any breach of this Condition or any claim by an employee or sub-contractor of the other party that his/her rights have been infringed.

## **16. HAZARDS**

16.1 Supplier shall perform all Services in a safe manner and ensure that its staff and those of any sub- contractor shall, when working on any site in connection with the Agreement, keep the work site free from all avoidable hazards and hazardous conditions, and comply with all Applicable Laws and any other appropriate standards, policies and procedures notified by Purchaser.

16.2 Supplier shall provide applicable hazard information such as material safety data sheets and shall inform Purchaser of all Applicable Laws and guidelines (statutory or otherwise) which Supplier knows or believes to be associated with the Goods and any combination of the Goods with another product.

16.3 Supplier shall defend and indemnify Purchaser and hold Purchaser harmless against all liability and loss related to any third party claim which arises from Supplier's or Supplier's sub-contractors' actions resulting in alleged release of any waste, hazardous substance or other pollutant.

16.4 Supplier shall endeavor to exceed all minimum requirements of Applicable Laws in accordance with generally accepted best working practices and any specific standards or other requirements of Purchaser.

## **17. RESPONSIBILITY FOR INFORMATION**

Supplier shall be responsible for any errors or omissions in any Specification drawings, calculations, Packaging details or other particulars supplied by Supplier, whether such information has been approved by Purchaser or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by Purchaser.

## **18. SUPPLIER'S EMPLOYEES**

The employment of any employee of Supplier shall remain with Supplier and shall not pass or otherwise transfer to Purchaser and nothing in the Agreement shall be construed or have effect as constituting any relationship of employer and employee between Purchaser and the employees and/or sub-contractors of Supplier. Supplier agrees that it is performing the Services as an independent contractor and shall retain all responsibility for payment of any income tax, and other Taxes that may arise from the provision of the Services, and shall indemnify Purchaser against any expense incurred by Purchaser as a result of Purchaser having to pay any Taxes, withholdings or unemployment, workers compensation, or other contributions and/or make any deductions at source in respect of the Services.

## **19. IT PRODUCT WARRANTIES**

19.1 Supplier warrants as follows with respect to any and all Goods constituting any sort of computer or data processing hardware and to all software, applications, computer or data processing services, databases and other information technology products or services sold, licensed, or otherwise provided or supplied by Supplier to Purchaser (collectively, "IT Products"), and Supplier shall procure that corresponding obligations are imposed with respect to its sub-contractors or agents:

19.1.1 Supplier is the sole owner of any software included in the IT Products or has the full right and authority to grant to Purchaser the license to use the IT Products, and Supplier shall provide Purchaser on request with a copy of reasonable documentation that support this representation;

19.1.2 the IT Products, and all parts thereof, are original and were created, provided, written and developed solely and entirely by or for Supplier, and no part of the IT Products was copied or derived from computer programs, documentation or materials owned by another, except as expressly identified to Purchaser in a schedule or exhibit to the Agreement, in which case Supplier has obtained and enjoys all rights, licenses and authority necessary or required to grant Purchaser the rights provided herein for the full term of the Agreement and any renewals;

19.1.3 to the extent any IT Product was developed by any employee of Supplier, such development was done for the benefit of Supplier, was within the scope of the employee's employment, and is now owned by Supplier;

19.1.4 no IT Product was created or obtained through any open source, general public license, interest group or multi-organizational software sharing scheme;

19.1.5 except as expressly and specifically agreed in an Exhibit or Schedule to the Agreement, all IT Products shall comply in all respects with all descriptions and representations made by Supplier in its proposals, web sites, brochures, product literature and other marketing materials, including performance capabilities, characteristics, specifications, configurations, standards, features, functions, response times and requirements, and shall be free from program errors defects, and Disabling Code (as defined below) and shall function properly and in conformity with the Agreement;

19.1.6 the IT Products shall not contain any "back door", "time bomb", "drop dead device" or other software routine which may (or may be used to) disable or disrupt normal operations either automatically, with the passage of time or under the control of any person; nor shall they contain any "virus", "Trojan horse", "worm" or other routine which may permit unauthorized access by any person, or on its own, disable, erase or otherwise harm or modify any software, data, device or operations whatsoever (collectively, "Disabling Code");

19.1.7 The IT Products shall be free from defects and/or Disabling Code, shall have been duly tested to ensure that there are no hidden defects or Disabling Code and shall have been subjected to recognized and appropriate release procedures including the latest version of a virus detection software package approved by Purchaser;

19.1.8 Supplier shall not access the IT Products or any other systems, software or data of Purchaser without the express prior written consent of Purchaser and shall not engage in self-help techniques nor alter, disable, erase, modify, destroy or harm in any way any IT Products or data stored or processed by or for Purchaser, whether or not Purchaser is in violation of any of the terms of the Agreement;

19.1.9 Supplier shall maintain appropriate backup, contingency and remedial plans as necessary to perform its obligations under the Agreement despite labor disturbances, strikes, lockouts, transportation problems, technology problems, equipment breakdowns or other similar events beyond its reasonable control; and

19.1.10 any software included in the IT Products will recognize and process all dates before, on and after January 1, 2000 without error, and will not require any update, upgrade or enhancement as a result of any change in calendar dates whatsoever, including any arithmetic program or calculation changes, or, to the extent that any of the foregoing is required, such updates, upgrades or enhancements will be provided at no additional cost to Purchaser.

19.2 Supplier shall defend, indemnify and hold Purchaser harmless against any and all losses, damages, costs, claims, proceedings, or expenses sustained or incurred directly and naturally, in the ordinary course of events, by Purchaser as a result of Supplier's breach of the above warranties.

## 20. LIABILITY AND INSURANCE

20.1 Supplier defend and indemnify Purchaser and hold Purchaser harmless against any and all Losses incurred or paid by Purchaser howsoever arising from any defect in the Goods or Services or any breach by Supplier of its obligations hereunder or of any statutory duty or from any act or omission of Supplier's employees, agents or sub-contractors.

20.2 Supplier shall maintain current insurance policies providing the coverages required in Condition 20.4 below with a reputable insurance company its liabilities under the Agreement for a minimum of \$1,000,000 per occurrence (or such larger coverage amount as may be set forth in the Purchaser Order or Specification) and, if required by Purchaser, at any time produce the policy of insurance and the receipt for the current premium to Purchaser for its inspection. Supplier agrees that any monies received by Supplier from the insurance company in full or part settlement of a claim arising out of the Agreement and paid by or due to Purchaser shall be paid immediately to Purchaser without offset or counter claim.

20.3 Any limitation, monetary or otherwise in such policy shall not be construed as a limitation on Supplier's liability and Supplier shall, notwithstanding such limitation, remain liable in full for the matters and to the extent not covered by the policy. Any limitation of Supplier's liability agreed to by Purchaser shall not apply to the extent Supplier carries insurance in a greater amount that would cover Supplier's liability to Purchaser.

20.4 Purchaser shall be named as an additional insured under the commercial general liability, products/completed operations liability, auto liability, umbrella liability, property insurance and such other coverages as are required herein. Such additional insured coverage shall be provided on a primary basis and shall not require Purchaser's policies to contribute toward the payment of any loss. All policies required by this Section shall not have deductibles or self-insured retentions in an amount greater than \$50,000.00. Upon the request of Purchaser, Supplier shall promptly provide Purchaser with Certificates of Insurance evidencing compliance with the terms of this Section, true and correct copies of the insurance policies obtained and any riders and exclusions under such policies which do not appear in the Insurance Services Department (ISO) commercial general liability form number CG 00 01 07 98. All policies of insurance shall be underwritten through insurance companies at all times licensed to do business in the Commonwealth of Pennsylvania and with an A.M. Best rating of A minus, Class IX, or higher and otherwise reasonably acceptable to Purchaser. Supplier shall have its respective policies of insurance as required herein to be endorsed to provide that such policies of insurance shall not be canceled, non-renewed or materially altered without at least thirty (30) days prior written notice to Purchaser. Supplier shall cause all insurance policies required by this Section to be issued in a form and substance which would permit Purchaser to obtain all relief available to it under this Agreement and which shall effectuate the intention of this Agreement. If the delivery of the Goods or the performance of the Services (including installation or set-up of any Goods) requires the Supplier's employees or agents to be present at any time on any premises owned or occupied by the Purchaser, then the Supplier or the agents of the Supplier, as appropriate, shall provide to the Purchaser proof that they have in effect the workers' compensation insurance coverages required by law in the jurisdiction where such premises of the Purchaser are located.

## **21. ASSIGNMENT**

21.1.1 Supplier's rights and obligations under the Agreement may not be assigned (other than its right to payment of amounts earned by performance) in whole or in part without the prior written consent of Purchaser (acting in its sole discretion) and any such consent shall not be deemed to relieve Supplier of any of its obligations and liability to Purchaser pursuant to the Agreement.

21.1.2 Purchaser shall be entitled at any time by notice in writing to Supplier to assign the whole or any part of its rights and obligations under the Agreement without restriction.

## **22. THIRD PARTY RIGHTS**

No person who is not a party to the Agreement shall have any rights under Applicable Laws to enforce any Term or Condition of the Agreement, provided that Condition 21 shall prevail over this Condition.

## **23. SUB-CONTRACTORS**

Supplier shall not, without the prior written notice to, and the prior written consent of, Purchaser, subcontract any of its obligations under the Agreement or appoint any sub-contractor or third person to carry out its obligations under the Agreement. If Supplier appoints a sub-contractor or other person to perform Supplier's obligations Supplier shall remain liable to Purchaser for the performance of all its obligations. If the Purchaser consents in writing to such subcontracting or further subcontracting, then every such contract or subcontract shall contain complete provisions identical to paragraphs included herein for the benefit, protection, and indemnification of the Purchaser including, without limitation, the liability and insurance provisions of Condition 20 above. The Purchaser shall be furnished immediately after the execution of each such contract with a certification of the contractor issuing the contract that such clauses are continued in the contract.

## **24. THE EURO**

If the Agreement remains in force on the date of withdrawal from circulation of national currencies in those countries of the European Union which have decided to adopt the EURO as their official currency, to the extent that the prices stipulated are expressed in a national currency(ies) which is (are) replaced by the EURO, the replacement of such national currency by the EURO shall not have the effect of nullifying or altering the rights and obligations of Purchaser and Supplier hereunder nor of discharging or excusing performance by either of the parties of their respective obligations hereunder nor shall it entitle either of the parties unilaterally to alter, terminate or revoke the Agreement. If any price stated in the Agreement is expressed in one or more of the national currencies which is replaced by the EURO, such price



shall automatically be converted into EURO at the official rate fixed between such currencies and the EURO or the effective rate at the time of conversion.

## **25. TERMINATION AND OTHER REMEDIES**

25.1 Subject to Condition 25.4, if either party to the Agreement is in breach of the Agreement and does not remedy the breach within 30 days of notice from the other party so to do the non-breaching party may terminate the Agreement immediately by notice to the party in breach.

25.2 If Supplier shall become a debtor in any bankruptcy or similar insolvency proceeding, or be dissolved or wound up, or shall make any assignment for the benefit of creditors or have a receiver appointed over all or any part of its assets or go into liquidation (whether voluntary or otherwise) save as part of a bona fide reorganization not involving insolvency or shall take or suffer to be taken any similar action as a result of its inability to pay its debts or its insolvency it shall promptly so notify Purchaser in writing giving particulars of the circumstances, whereupon Purchaser may terminate the Agreement immediately by notice. (For the avoidance of doubt, Purchaser may terminate the Agreement upon the occurrence of any of the circumstances described in this Condition notwithstanding that Supplier may not have given notice to Purchaser as required.)

25.3 If at any time there shall be any change in the legal or beneficial ownership or Control of Supplier:

25.3.1 Supplier shall immediately so notify Purchaser in writing; and

25.3.2 Purchaser may, upon receiving notice or otherwise becoming aware of a change in the legal or beneficial ownership or Control of Supplier, terminate the Agreement immediately by notice in writing to Supplier if it considers in its sole discretion that such change of ownership or Control are prejudicial to its interests.

25.4 The Agreement may be cancelled at any time by Purchaser for its sole convenience by giving Supplier notice in writing. Purchaser shall in such case pay for all Goods delivered and under binding Purchase Orders at the time of termination at the contract price, and shall pay a fair and reasonable price shall be paid for all Services in progress that have been delivered to Purchaser. Purchaser shall also pay a reasonable termination charge to compensate Supplier for all reasonable costs necessary to terminate commitments that Supplier has made in justifiable reliance on the Agreement and that cannot be terminated by Supplier without liability or penalty. Purchaser's aggregate liability in any case for all Goods, Services and termination charges under each Agreement shall not exceed the original contract price thereof.

25.5 Without limiting any of its other rights and remedies, on any breach of Supplier's obligations Purchaser may (a) cancel any deliveries of Goods or Services which in Purchaser's opinion cannot be made within a reasonable time after the due date without incurring any liability on the part of Purchaser and (b) demand reasonable assurance of Supplier's ability to perform its obligations.

## **26. CONSEQUENCES OF TERMINATION**

26.1 On termination of the Agreement Supplier shall, not later than seven days after Purchaser's request but at Purchaser's cost:

26.1.1 deliver to Purchaser (or as Purchaser shall direct) all quantities of the Goods in its possession which comply with the Agreement which Purchaser is obligated to purchase;

26.1.2 return to Purchaser all documents provided to Supplier by Purchaser; and

26.1.3 ensure that all documents containing Intellectual Property Rights and/or any information of a technical nature relating to the Goods, the manufacture of the Goods and the provision of Services, or of a confidential nature and supplied by Purchaser to Supplier, shall be returned to Purchaser or destroyed by Supplier at Purchaser's option.

26.2 With effect from termination of the Agreement Supplier shall not make any use for any purpose whatsoever of any Intellectual Property Rights which is the property of Purchaser.

26.3 Termination or expiry shall not relieve either party from any liability or action accrued prior to such termination or expiry. Further, termination of the Agreement or withdrawal of any Goods or Services from the Agreement shall be without prejudice to the continuation in force of Conditions 1, 2, 6, 7, 10, 11, 15, 19, 20, 21, 22, 27, 28 and 30. Supplier agrees to provide Purchaser with all reasonable support with respect to any investigation required by Purchaser or any regulator with respect to the Goods or Services carried out prior or after such termination or withdrawal. Purchaser will reimburse Supplier's reasonable costs in providing such assistance unless such termination or withdrawal has occurred for a reason contained in Conditions 25.1 through 25.3.

## **27. WAIVER**

No waiver or forbearance by Purchaser in enforcing any of its rights under the Agreement shall prejudice the ability of Purchaser to enforce such rights or any of its other rights at any time in the future. No waiver shall be effective unless in writing and signed by Purchaser. For the avoidance of doubt, it is agreed that a waiver of a right on one occasion shall not constitute a waiver of the same right in the future.

## **28. SEVERABILITY**

Any provision of these Terms and Conditions which is declared void or unenforceable by any competent authority or court shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect the other provisions of these Terms and Conditions, which shall continue unaffected.

## **29. AMENDMENT**

The Agreement may only be amended in writing by authorized representatives of both parties.

## **30. GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed as to all matters affecting its validity, construction or performance under the laws of the Commonwealth Pennsylvania, other than its principles of conflict of laws. The parties hereto agree that any action brought by any one of them, whether federal or state, shall be brought within the County of Berks in the Commonwealth Pennsylvania. The parties hereto further agree to waive all issues of personal jurisdiction and venue with respect to any actions brought pursuant to this Purchase Order. The parties specifically disclaim and exclude the application to the Agreement of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **31. CONTINUOUS IMPROVEMENT PROGRAM**

31.1 Supplier agrees to use its best efforts to identify and target all potential areas of cost reduction relating to the performance of its obligations hereunder (the "Continuous Improvement Program") including the following (collectively, "Improvements"):

31.1.1 improvements in quality and technology relating to the manufacture of Goods and to Good Manufacturing Practices;

31.1.2 reduction of waste associated with manufacture of Goods including a reduction in maximum exposure of materials;

31.1.3 a reduction in all costs associated with the performance of Supplier's obligations under this Agreement including the cost of materials and all costs associated with the Manufacture and delivery of the Goods;

31.1.4 improvements in quality of service provided by Supplier to Purchaser in connection with the performance of this Agreement;

31.1.5 Packaging and processing time reduction in respect of the manufacture of Goods;

31.1.6 improvements in the supply chain efficiency between Supplier and Purchaser and its Affiliates in connection with the performance of this Agreement (including delivery procedures and transport costs where relevant);

31.1.7 best practice in relation to Good Manufacturing Practice issues;

31.1.8 identification of new product developments;

31.1.9 enterprise/net trade; and

31.1.10 any other objectives agreed by the parties from time to time.

31.2 in order to pursue the Continuous Improvement Program, Supplier shall supply Purchaser

with all relevant information in its possession, including without limitation details of costs of all stages and materials in the manufacturing process, to the extent not forbidden to do so by Applicable Laws or obligations of confidentiality undertaken before the Agreement

31.3 The parties shall hold an annual meeting to agree objectives for the Continuous Improvement Program, targets for cost reduction and the means of measuring the same. Progress against objectives shall be measured quarterly. The parties shall use commercially reasonable efforts to achieve the objectives and specifications identified for the relevant year.

31.4 Each party shall disclose all Improvements of which it is aware and subject to Purchaser's written agreement (and subject to obtaining any necessary approvals from the relevant Regulator) shall immediately become subject to any applicable formal change procedure set forth in the Agreement. Supplier shall not implement any Improvement without Purchaser's written consent obtained through such Change Procedure.

31.5 The benefits of cost reductions and improved efficiencies achieved as the result of the Continuous Improvement Program shall be allocated as follows:

31.5.1 where benefits of cost reductions and improved efficiencies are only applicable to the manufacture of Goods pursuant to this Agreement such benefits shall be shared equally between Purchaser and Supplier; and

31.5.2 where benefits of cost reductions and improved efficiencies shall be applicable to the manufacture of Goods for other customers of Supplier such benefits such shall be passed in total to Purchaser.

31.6 The rights in title to Improvements shall be owned as follows:

31.6.1 All rights in and title to any Improvements made by Supplier in conjunction with Purchaser shall, where they are incapable of being used independently of Purchaser's Intellectual Property, be assigned to Purchaser or to its designee, who shall be free to use the same without restriction throughout the world including the right to grant licenses thereof;

31.6.2 All rights in and title to any Improvements made by Supplier in conjunction with Purchaser shall, where they are capable of being used independently of Purchaser's Intellectual Property, be owned jointly by Purchaser and Supplier;

31.6.3 All rights in and title to any Improvements made solely by Supplier hereunder, which are incapable of being used independently of Purchaser's Intellectual Property, shall remain the property of Supplier but Supplier hereby grants Purchaser an exclusive, perpetual, royalty free license to use such Improvements for any purpose whatsoever anywhere in the world including the right to grant sub- licenses thereto;

31.6.4 All rights in and title to any Improvements made solely by Supplier hereunder, which are capable of being used independently of Purchaser's Intellectual Property, shall remain the property of Supplier but Supplier hereby grants Purchaser a non-exclusive, perpetual, royalty free license to use such Improvements for any purpose whatsoever anywhere in the world including the right to grant sub- licenses thereto; and

31.6.5 All rights in and title to any Improvements made solely by Purchaser or any Affiliates of Purchaser hereunder shall remain the property of Purchaser or any such Affiliate and shall only be used by Supplier for the manufacture of the Goods in accordance with the terms of this Agreement.

## **32. SUPPLY AND STORAGE OF MATERIALS AND PRODUCTS**

32.1 Supplier shall be solely responsible for ordering the relevant quantities of materials and for the timely delivery of such materials. Supplier shall purchase and use only materials and procedures in the manufacture of the Goods which comply with the requirements of Good Manufacturing Practice and otherwise are fit for purpose. Supplier shall not obtain any supplies of materials from any party except a vendor agreed by Purchaser. Any such purchase from a vendor shall be on Supplier's own behalf and not as an agent for Purchaser and Supplier hereby agrees to indemnify Purchaser against any claims which such a vendor of Supplier may make against Purchaser in respect of any such purchase.

32.2 Supplier shall at all times store and warehouse all materials and Goods manufactured by Supplier pursuant to this Agreement in premises that are secure, clean, and otherwise acceptable to Purchaser. Supplier shall operate a warehousing system which identifies all Goods according to type and status.