
General Terms and Conditions of Purchase

1. Scope

The following general terms and conditions (“General Conditions”) govern any orders placed by any individual company within the Stadler Group (each of them, individually, the "Purchaser") for the processing, manufacturing and/or delivery of tangible products (“Goods”) and the provision of services (“Services”). These General Conditions form an integral part of any agreement entered into by the Purchaser and the supplier of Goods or Services (the “Supplier”), except if and to the extent otherwise expressly agreed to in writing by the Purchaser and the Supplier. These General Conditions replace the General Conditions previously applicable to each of the individual companies within the Stadler Group.

2. Contract

- 2.1. In order to be binding upon the Purchaser, an order for the purchase of Goods or Services submitted to the Supplier shall be in the form of a contract (“Contract”), which Contract shall be either (i) written agreement executed by the Purchaser and the Supplier or (ii) a Purchase Order issued by the Purchaser to the Supplier (either in writing or in electronic form, but in all cases containing a reference to these General Conditions) and accepted (in writing or in electronic form) by the Supplier in the same language as the Purchaser’s Order (“Order”). Supplier’s failure to respond to an Order as provided in these General Conditions or in the Order, shall be deemed to constitute acceptance of the conditions set forth in such Order, including these General Conditions, even if they deviate from the Supplier's quotation.
- 2.2. The Purchaser’s failure to respond to an Order confirmation of the Supplier deviating from the Purchaser's Order and/or from these General Conditions shall not be deemed to constitute acceptance of the Order confirmation, and no valid Contract shall be deemed to have been concluded. In the event the Supplier executes an Order that has not been expressly accepted by the Purchaser, the terms and conditions set forth in the Order and these General Conditions shall govern.
- 2.3. In the event the Purchaser’s Order sets forth a limited time period for acceptance, after the expiration of such time period without the Purchaser’s acceptance, the Order shall no longer be binding upon the Purchaser.
- 2.4. No terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotations, acknowledgments or acceptances or orders, specifications or similar documents shall form part of the Contract, and the Supplier waives any right which it otherwise might have to rely on such other terms or conditions.

3. Price

- 3.1. The price for the Goods and/or Services purchased by the Purchaser shall be the price agreed to by the Purchaser and the Supplier and set forth in the applicable Contract (“Price”). Any subsequent price increases, including increases caused by revisions to

the original Order requested by the Purchaser, shall be valid and binding upon the Purchaser only if agreed to in writing by the Purchaser. Any costs incurred in relation to transportation, insurance, customs clearance, fees and taxes shall be governed by INCOTERMS 2010, DDP the Purchaser.

- 3.2. Unless as expressly agreed to in writing by the Purchaser and the Supplier, the Price shall include all applicable federal, state and local taxes, duties, tariffs, assessments and other charges applicable to the design, manufacture, production, testing, sale and delivery of the Goods, including value added tax (“VAT”), at the then applicable rate, but except any applicable transaction privilege (sales) or use taxes, of which the Supplier will separately notify the Purchaser. If the Purchaser delivers written notice to the Supplier that any of the Goods is exempt from otherwise applicable taxes, the Supplier will not charge such taxes to the Purchaser. The Supplier shall promptly notify the Purchaser of any claim by a taxing authority for such taxes, and the Supplier shall cooperate with the Purchaser in contesting such claim.

4. Supplier’s Responsibilities

- 4.1. The Supplier shall deliver the Goods and Services:
 - 4.1.1. as provided in Section 5 below;
 - 4.1.2. in accordance with applicable laws and regulations, and all specifications, specified materials and applicable documentation, without any changes to the materials contained in the Goods or to the Goods design;
 - 4.1.3. free from defects and third parties’ rights;
 - 4.1.4. on the date and in the quantities specified in the Contract;
 - 4.1.5. in accordance with the Purchaser’s instructions, including, without limitation, its health, safety and environmental requirements;
 - 4.1.6. fit for any particular purpose expressly or impliedly made known to the Supplier in the Contract or fit for the purposes for which goods or services of the same type or description would normally be used; and
 - 4.1.7. in packaging and containers adequate to preserve and protect the Goods.
- 4.2. The Supplier shall submit to the Purchaser invoices according to applicable law, generally accepted accounting principles and any specific requirements received from the Purchaser. All invoices shall contain at least the Supplier name, address and reference person with contact information; invoice date; invoice number; Order number; Supplier number; address of the Purchaser; quantity; specifications; currency; tax or VAT number and amount payable; authorized economic operator and/or approved exporter authorization number, if applicable; any specific payment terms. Invoices related to the provision of Services shall include detailed time sheets, which shall be confirmed in writing by the Purchaser.

- 4.3. The Supplier shall hire in its name all employees required to provide the Goods and Services and it shall be solely responsible for (i) any accident or occupational disease occurred to its employees and subcontractors, and (ii) any claims or causes of action filed by its employees and/or subcontractors, and it shall defend, indemnify and hold the Purchaser harmless against any claim, proceeding, action, loss, cost and damage related thereto and any violation of any law, rule or regulation regarding its employees and subcontractors.

5. Delivery of Goods and Services

- 5.1. The Supplier shall be solely responsible for arranging and procuring transportation of any Goods purchased by the Purchaser. Unless agreed otherwise in the Contract, the Supplier shall bear any risk of loss and damage pursuant to INCOTERMS 2010, DDP the Purchaser, or the place identified in the Contract.
- 5.2. The Services shall be provided at the place specified in the Contract and, if no such place has been specified, at the Purchaser's place of business. Unless otherwise requested by the Purchaser, Goods shall be delivered and the Services shall be provided during the Purchaser's regular business hours.
- 5.3. The Supplier shall deliver, at the time of acceptance of the Contract, the following minimum information: Order number, date of Order, the customs tariff numbers of the country of consignment, and the countries of origin for all Goods to be delivered. For controlled Goods or Services, the Supplier shall indicate the relevant national export control numbers and, should the Goods be subject to U.S. export regulations, the relevant U.S. Export Control Classification Numbers (ECCN) or classification numbers of the International Traffic in Arms Regulations (ITAR). The Supplier shall also deliver proof of preferential origin, conformity declarations and marks of the country of consignment or destination, and certificates of origin. The Supplier shall clearly state the Order number on all invoices.
- 5.4. Upon delivery, the Supplier shall provide to the Purchaser a delivery note and any required export and import documents not expressly set forth in Section 5.3 above.
- 5.5. Unless otherwise agreed to in writing, title to Goods shall pass to the Purchaser at delivery of such Goods.

6. Payment

- 6.1. The terms of payment are net cash within thirty calendar days from the later of the date on which the correct invoice is received by the Purchaser or the date on which the Goods and Services are accepted by the Purchaser. The Purchaser may (i) withhold payment pending receipt of evidence from the Supplier, as reasonably required by the Purchaser, to establish the absence of liens, encumbrances and claims against any property of the Purchaser related to the Goods or Services that are governed by a Contract, or (ii) set off any amount due to the Supplier, or withhold payment for Goods or Services not provided in accordance with a Contract.

- 6.2. If Goods or Services are subject to inspection, testing or acceptance by the Purchaser, no payment shall become due until the results of such inspection, testing, or acceptance confirm that the Goods or Services are in compliance with any specifications or conditions supplied or advised by the Purchaser to the Supplier.
- 6.3. All payments shall be in U.S. Dollars, unless as otherwise agreed to in the Contract.

7. Acceptance; Inspection

- 7.1. The Purchaser shall not be deemed to have accepted any Goods or Services until it has had time to inspect or test them following delivery as set forth below or, in the case a defect in the Goods or Services was not reasonably detectable during the inspection, within a reasonable time period after such defect has become apparent.
- 7.2. The Purchaser shall have the right, for ninety (90) days after delivery, to inspect the Goods at any reasonable place and in any reasonable manner and, if such inspection reveals that any Goods do not conform or are unlikely to conform with the Contract or with any agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or are not performed in accordance with generally acceptable practices, procedures and standards of the respective industry ("Nonconforming Goods"), the Purchaser may reject any or all of the Goods and the Supplier shall reimburse the Purchaser for all expenses incurred by the Purchaser in connection with such inspection, and (b) if the Purchaser discovers grounds for revocation of acceptance of any of the Goods during the applicable warranty period set forth in Section 10 below, the Purchaser shall have the right, for one hundred twenty (120) days after such discovery, to revoke acceptance of any or all of the Goods. The parties agree that the time periods for inspection and rejection, discovery of Nonconforming Goods and revocation of acceptance set forth in this Section are all reasonable. The Purchaser's revocation of acceptance will not be deemed improper for failure to give to the Supplier the opportunity to cure any improper tender of delivery of, or nonconformity in, the Goods. In any dispute regarding rejection or revocation of acceptance, the Supplier shall bear the burden of establishing the wrongfulness of any such rejection or revocation.
- 7.3. The Purchaser shall have the right, for ninety (90) days after delivery, to inspect and test the Services at any reasonable place and in any reasonable manner and, if such inspection reveals that any Services do not conform or are unlikely to conform with the Contract or with any agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or are not performed in accordance with generally acceptable practices, procedures and standards of the respective industry ("Nonconforming Services"), the Purchaser may reject any or all of the Services and the Supplier shall reimburse the Purchaser for all expenses incurred by the Purchaser in connection with such inspection.
- 7.4. Notwithstanding any inspection or tests by the Purchaser, the Supplier shall remain responsible for compliance of the Goods and Services with the Contract. This applies whether or not the Purchaser has exercised its right of inspection and/or testing and

shall not limit the Supplier's obligations under the Contract. For the avoidance of doubt, inspection or testing of Goods or Services by the Purchaser shall in no event exempt the Supplier from or limit the Supplier's warranties or liability in any way.

8. Change Orders

The Purchaser may, from time to time, initiate changes by issuing to the Supplier written notices (each, a "Change Order") that alter, add to or deduct from the Goods or Services, but that are otherwise subject to the terms and conditions of an Order or Contract. Change Orders include, but not limited to, changes to: (i) plans, specifications, drawings, samples, models and other descriptions; (ii) quantities ordered; (iii) the delivery date or place of delivery; (iv) the Price; and (v) the method of shipment or packing. The Supplier shall promptly comply with the terms of each Change Order signed by the Purchaser. **THE SUPPLIER AGREES THAT IT WILL DELIVER NO GOODS OTHER THAN THE GOODS AS DESCRIBED IN AN ORDER UNLESS AND EXCEPT TO THE EXTENT SET FORTH IN A CHANGE ORDER EXECUTED BEFORE SUCH GOODS ARE DELIVERED. THE SUPPLIER UNDERSTANDS AND AGREES THAT IT WILL NOT BE PAID FOR ANY GOODS NOT DESCRIBED IN A CONTRACT UNLESS SUCH ADDITIONAL OR DIFFERENT GOODS ARE AUTHORIZED BY A WRITTEN CHANGE ORDER EXECUTED BEFORE SUCH GOODS ARE DELIVERED. ANY UNAUTHORIZED GOODS WILL BE AT THE SUPPLIER'S SOLE RISK, AND THE SUPPLIER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL LOSSES ARISING FROM ANY UNAUTHORIZED GOODS AND THE SATISFACTION OF ANY SUCH LOSSES. THE SUPPLIER EXPRESSLY WAIVES ANY CLAIM TO PAYMENT FOR ANY GOODS DELIVERED WHICH ARE NOT SET FORTH IN A CONTRACT OR AN EXECUTED CHANGE ORDER.**

9. Delivery Dates

Time is of the essence in the performance of the Supplier's obligations under a Contract, and no acts of the Purchaser, including, without limitation, modification of an Order or acceptance of late deliveries, shall constitute a waiver of this Section. The Supplier shall be solely responsible for, and fully warrants, compliance with the delivery dates agreed in a Contract. Any delay on the part of the Supplier shall automatically cause a breach by the Supplier and the Supplier shall be liable to the Purchaser for all the ensuing direct and indirect damages caused by late delivery.

Unless otherwise set forth in the Order, if the Supplier fails to perform by the delivery date, the Supplier shall pay to the Buyer Delay Liquidated Damages in the amount of 5% of the price of the delayed Contract Product per week or any portion thereof that the Contract Product is delayed, up to a maximum of the total value of the Order.

Such liquidated damages shall be deemed to be a genuine estimate of the foreseeable damages incurred by Buyer due to delay, and not a penalty. Delay Liquidated Damages paid under this section shall constitute Buyer's sole recourse for late performance of Supplier under the Contract.

10. Warranty

10.1. The Supplier warrants that the Goods and Services:

- 10.1.1. are free from defects and third parties' rights and in compliance with applicable product specifications, workmanship, specified material, quality and document requirements (or in the absence thereof are in accordance with generally accepted practices, procedures and standards and are fit for the purposes for which goods and services of the same type or description would normally be used) and the relevant norms and standards regarding occupational, product and operational safety; and
- 10.1.2. are fit for any particular purpose expressly or impliedly made known to the Supplier in the Contract.
- 10.2. Unless as otherwise set forth in the Contract, the warranty period shall be the later of thirty-six (36) months from acceptance of the Goods or Services by the end-costumer, but in no event more than forty-two (42) months following delivery of the Goods or Services.
- 10.3. The Purchaser shall be entitled to notify the Supplier of any kind of defect during the full warranty period, and thereafter shall be released from any legal duties of examination and defect notification. A Good delivered or Service provided by the Supplier shall be deemed to be defective within the meaning of these warranty provisions if it does not correspond to the specifications as set forth in the individual Contract or if it is not fit for the purpose or is only partly fit for such purpose.

11. Remedies

- 11.1. In case of any breach of warranty under Section 10 above or breach of any term of the Contract, including delivery terms, the Purchaser shall give notice in writing to the Supplier and, should the Supplier fail to remedy such breach within forty eight (48) hours thereafter or such other grace period agreed in writing between the Supplier and the Purchaser, the Purchaser shall be entitled, in its sole discretion, to one or more of the following remedies, which shall be cumulative and not exclude any other right or remedy available at law or in equity:
 - 11.1.1. to provide the Supplier with the opportunity to perform such work to fulfill the Contract;
 - 11.1.2. to obtain repair or replacement of the defective Goods or Services;
 - 11.1.3. to refuse any further Goods and Services;
 - 11.1.4. to claim damages resulting from the Supplier's breach and impose penalties related to Supplier's breach; and
 - 11.1.5. to terminate the Contract, provided that the Purchaser shall have no obligation to pay the Supplier for work performed and the Supplier shall promptly return any payments received, forego retrospective performance and take back all defective Goods at its own cost and expense.

- 11.2. The Supplier shall be liable in full to the Purchaser for any and all damages incurred by the Purchaser, either directly or indirectly, as a result of the Supplier's failure to perform, in part or full, under the Contract.
- 11.3. In the event a Good or Service that has been processed, manufactured and/or delivered by the Supplier results in injury to persons or damages to property due to Defects (as defined in Section 11.4 below), the Supplier shall be fully liable for any resulting claims and it shall fully indemnify and hold the Purchaser and its affiliated entities, including any Stadler Group companies harmless, including, but not limited to, against the costs and time and effort incurred by the Purchaser in connection with informing and warning customers and any products recall. The Supplier hereby undertakes to obtain such insurance and product liability insurance as reasonably acceptable to the Purchaser and to provide to the Purchaser the relevant insurance certificate immediately upon request.
- 11.4. A Defective Product is defined as one that (1) does not meet the Order requirements; (2) causes a portion of the project work to cease operating or to operate in a degraded mode; or (3) inflicts damage on any portion of a DMU, Equipment, manuals, training, or the project work, prior to Final Acceptance of the Goods or Services or during the period of any Warranty.

12. Hazardous or non-registered materials

The Supplier represents and warrants that all the materials used and/or handled by Supplier are used and/or handled in compliance with applicable law governing hazardous materials, and that such materials are registered and authorized in accordance with applicable regulation of hazardous materials, taking into account the use of the materials set forth in the Contract with the Purchaser. Upon the Purchaser's request, the Supplier shall produce appropriate proof of compliance with the obligations contemplated in this Section 12. The Supplier shall prepare and maintain current safety data sheets, it shall make them available to the Purchaser electronically, and it shall automatically provide them with the first delivery of a Good.

13. Intellectual property

- 13.1. The Supplier represents and warrants that the Goods and Services do not infringe upon any proprietary rights, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, copyrights and related applications, renewals, extensions, restorations or proprietary rights in results created intellectually which are protected by confidentiality, including but not limited to know-how and trade secrets (collectively, "Intellectual Property") of third parties.
- 13.2. If the Goods or Services infringe on any third party's Intellectual Property, the Supplier shall reimburse and indemnify the Purchaser for any costs, claims, demands, liabilities, expenses, damages or losses (including any direct, indirect, consequential losses, loss of profit or reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of the third party's Intellectual Property

infringement for which the Supplier is responsible, provided that such indemnification shall not limit any further compensation rights of the Purchaser.

- 13.3. If any infringement claim is brought against the Purchaser, the Supplier shall, in the Purchaser's discretion and at the Supplier's sole cost, procure for the Purchaser the right to continue to use the Goods or Services, modify the Goods or Services so that they cease to be infringing, or replace the Goods or Services so that they become non-infringing.
- 13.4. The Supplier hereby grants to the Purchaser a worldwide, perpetual, transferable, irrevocable, non-exclusive and royalty-free license to use the Intellectual Property in the Goods and Services, including any embedded software. The Supplier hereby grants to the Purchaser full ownership rights in and to any Intellectual Property in any work products resulting from the Services for the full duration of such rights and agrees to execute any and all documents and to take any and all actions reasonably necessary for the Purchaser to acquire such ownership rights and to be registered as their owner.

14. Property of the Purchaser

- 14.1. All documentation, records, drawings, models, matrices, samples, computer programs, tools, etc. (collectively, "Documentation") made available to the Supplier by the Purchaser in connection with a Contract shall remain the sole and unrestricted property of the Purchaser and shall be returned by the Supplier to the Purchaser in sound condition at the termination or expiration of the relevant Contract, or upon the Purchaser's written request thereof. Without the written consent of the Purchaser, the above Documentation may not be passed on to third parties or made available for them to view, nor may it be copied or destroyed.
- 14.2. All materials, as well as semi-finished and finished products, given to the Supplier for processing, assembly, examination or finishing remain the unrestricted property of the Purchaser. The Supplier shall maintain such products and insure them adequately against fire, explosion, theft and natural hazard. Until such time as the Supplier shall return such materials and/or products delivered to the Supplier by the Purchaser, the Supplier shall bear any risks associated with any damage to or loss of property. The Supplier shall be liable, vis-a-vis the Purchaser, for all damages incurred by the Purchaser in connection with the delivery to and possession by the Supplier of such materials and products, including, without limitation, damages to the objects themselves and all direct and indirect damages resulting from the incorrect maintenance, destruction, loss or the delayed return of these objects.
- 14.3. The assertion of retention rights over the property made available to the Supplier by the Purchaser is hereby expressly excluded.

15. Confidentiality; Data Protection

- 15.1. The Supplier shall treat all proprietary or confidential documents and information received from the Purchaser in connection with a Contract ("Confidential

Information”) with absolute discretion at all times and make such Confidential Information available to third parties only insofar as this is absolutely necessary for the performance of the Contract. The Supplier shall restrict disclosure of Confidential Information to such of its employees, agents or subcontractors or other third parties as need to know the same for the purpose of the provision of the Goods or Services and only if subject to non-disclosure obligations at least as stringent as those set forth herein.

- 15.2. All documents received from the Purchaser and any copies thereof shall be promptly returned to the Purchaser at the expiration or termination of the relevant Contract.
- 15.3. The Supplier shall protect, and it shall adopt any appropriate measures in accordance with the generally accepted standards in the industry (or its own standards, if higher) to protect, any data or information related to the Purchaser, any customers, suppliers or affiliates of the Purchaser or the Supplier that relates to an identified or identifiable individual or entity or any other entity which is subject to applicable data protection or privacy laws and regulations, or that otherwise qualifies as “personal data,” “personal information” or “personally identifiable information” under applicable law (“Customer Data”). The Supplier shall not use Customer Data for purposes other than the provision of the Goods and Services, reproduce the Customer Data in whole or in part, or disclose Customer Data to any third party, except as required by applicable law or with the prior written consent of the Purchaser. In the event any Customer Data is sensitive information, the Supplier hereby agrees to enter into a separate non-disclosure agreement.
- 15.4. The Supplier shall have adequate virus protection software and operating system security patches for all computers and software used in providing the Goods and Services and it shall promptly inform the Purchaser of any security breaches or irregularities regarding Customer Data.
- 15.5. The provisions of this Section 15 shall survive the expiration or termination of the Contract.

16. Assignment and Subcontracting

- 16.1. Supplier may delegate or subcontract the manufacture of the parts to third parties (“Subcontractors”); provided that Supplier shall obtain the prior written consent of Buyer in the event of delegation or subcontracting of all or a substantial part of the manufacture of the Parts to a third party. Supplier shall ensure that all Subcontractors comply with and abide by the terms and conditions of this Agreement, and in no event shall Supplier be released from any of its obligations under this Agreement. **If Buyer notifies Supplier that Buyer has an objection to a particular Subcontractor, Supplier shall not subcontract to such Subcontractor any work under this Agreement and shall promptly terminate any subcontracts with such Subcontractor..**

- 16.2. The Purchaser may at any time assign, transfer, encumber, subcontract or share in any other manner all or any of its rights under the Contract to any of its affiliates (including its sister companies).

17. Termination

- 17.1. In addition to exercising any other rights and remedies available to the Purchaser at law, in equity or under a Contract, the Purchaser may immediately terminate all or any part of a Contract, regardless of whether the Supplier is in default, by giving the Supplier a thirty days' written notice of termination (a "Termination Notice").
- 17.2. Any such termination will be deemed a termination for convenience unless in the event of: (i) any breach or repudiation by the Supplier of all or any part of a Contract; (ii) the filing by or against the Supplier of a petition in bankruptcy; (iii) the appointment of a receiver on account of the Supplier's insolvency; or (iv) a general assignment by the Supplier for the benefit of its creditors.

18. Parties' Obligations Upon Termination

Upon receipt of a Termination Notice, the Supplier shall discontinue its performance under a Contract on the date and to the extent specified in the Termination Notice and, unless otherwise required by the Termination Notice: (i) place no further orders for materials other than as may be specified in the Termination Notice; (ii) promptly make every reasonable effort either to obtain cancellation on terms satisfactory to the Purchaser of all orders to its vendors or to assign such orders to the Purchaser; and (iii) upon the Purchaser's request, assist the Purchaser in the maintenance, protection and disposition of property acquired by the Purchaser under a Contract. If the Purchaser terminates a Contract for convenience, the Purchaser shall pay to the Supplier an equitable adjustment to include: (i) any amounts owing to the Supplier for conforming Goods delivered prior to delivery of the Termination Notice and for the Supplier's performance under the Contract thereafter if so directed in the Termination Notice; (ii) a reasonable amount for any unique Goods and materials in production as of the date of delivery of the Termination Notice that are not part of the Supplier's standard stock; and (iii) those reasonable costs, if any, incurred by the Supplier solely as a result of the early termination of a Contract, provided that the Supplier submits to the Purchaser invoices for such amounts within thirty (30) days after delivery of the Termination Notice. The Supplier acknowledges that thirty (30) days is a reasonable time for the Supplier to submit such invoices and agrees that its failure to submit such invoices within thirty (30) days after delivery of the Termination Notice will constitute a waiver of such claim. EXCEPT IN THE EVENT OF A TERMINATION FOR CONVENIENCE, THE TOTAL AMOUNT TO BE PAID TO THE SUPPLIER IN CONNECTION WITH ANY TERMINATION WILL NOT EXCEED THE PRICE, AS REDUCED BY (i) THE AMOUNT OF PAYMENTS MADE TO THE SUPPLIER, AND (ii) THE PORTION OF THE PRICE ALLOCABLE TO GOODS CANCELLED PURSUANT TO SUCH TERMINATION. THE SUPPLIER EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR COMPENSATION OR CHARGES (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR LOST PROFITS), BEYOND THAT TO WHICH IT MAY BE ENTITLED UNDER THIS SECTION, AS A RESULT OF ANY TERMINATION OF A CONTRACT. THE SUPPLIER AGREES THAT ITS SOLE REMEDY IN CONNECTION WITH ANY TERMINATION WILL BE TO

RECEIVE COMPENSATION FROM THE PURCHASER IN ACCORDANCE WITH THE TERMS OF THIS SECTION. The Purchaser may, at its expense, audit the Supplier's records with respect to any claim for payment submitted by the Supplier. If the Purchaser has overpaid any amounts to the Supplier, as determined in accordance with this Section, the Supplier shall promptly reimburse such amount to the Purchaser.

19. Indemnification

- 19.1. The Supplier shall indemnify, and hold harmless the Purchaser and its affiliates, and their employees, managers, members, officers, shareholders, directors, agents, representatives, contractors, insurers, attorneys, successors, and assigns from and against all claims, demands, judgments, losses, liabilities, damages, costs, fees, expenses, including attorneys' fees and court costs, arising out of the Supplier's performance under the Contract. The Supplier shall defend, at the Supplier's expense, all suits or proceedings arising out of the foregoing.
- 19.2. Any claim for indemnification under this Section 19 must be asserted by providing written notice to the Supplier specifying the factual basis of the claim in reasonable detail to the extent then known by the Purchaser asserting the claim. The right to indemnification will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the date hereof, with respect to the terms of the Contract and these General Conditions. THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE XIX WILL APPLY AND BE ENFORCEABLE TO THE EXTENT OF THE SUPPLIER'S OWN LIABILITY EVEN IF THE SUPPLIER ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PURCHASER THAT IS SEEKING INDEMNIFICATION (OR OF ITS AFFILIATES), OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PURCHASER THAT IS SEEKING INDEMNIFICATION (OR OF ITS AFFILIATES). The waiver of any condition based on the accuracy of any term of the Contract and these General Conditions, or on the performance of or compliance with any covenant or agreement, will not affect the right to indemnification, payment of damages, or other remedy based on any term of the Contract and these General Conditions.

20. Ethics and Prohibited Corrupt Practices

The Purchaser shall only deal with contractors who uphold the highest standards of honesty, ethics and professionalism in the conduct of their businesses. The Purchaser takes very seriously and will investigate any suggestion or evidence that a contractor has engaged in corrupt or improper business practices, or has used coercion, improper inducements, offers of improper inducement, or violence to gain contractual advantage. These are practices that the Purchaser does not allow and the Purchaser shall avoid any direct or indirect dealings with contractors who conduct their businesses this way. Should the Purchaser discover that a contractor has engaged in such practices, it will be entitled to terminate a Contract.

21. Governing law and Dispute Resolution

- 21.1. The contractual relationships between the Purchaser and the Supplier is governed by the laws of the State of Utah, to the exclusion of its regulations concerning conflicts of legal systems and to the exclusion of the provisions of the Convention of the United Nations on Contracts for the International Sale of Goods (Vienna Sales Convention).
- 21.2. All actions and proceedings arising from or related to these General Conditions and any Contract, or either party's rights, obligations or performance hereunder, shall be litigated in local, state or federal courts located within the City of Salt Lake City, Utah. The Supplier consents and submits to the personal jurisdiction and venue of any local, state or federal court located within the City of Salt Lake City, Utah.
- 21.3. For cross-border dispute resolution matters whereby the Purchaser and the Supplier are registered in different countries, unless otherwise agreed in writing by the parties, any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination or the legal relationships established thereby, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be the location where the Purchaser is registered, unless otherwise agreed in writing. The language of the proceedings shall be English. The decision of the arbitrators shall be final and binding upon the parties, and neither party shall seek recourse to an ordinary state court or any other authority to appeal for revisions of the decision.
- 21.4. In case of any dispute, the non-prevailing party shall reimburse the prevailing party for attorney's fees and other costs reasonably incurred in connection with the dispute.

22. Notices

Any notice shall be given by sending the same by registered mail, courier, fax or by email to the address of the party as stated in the Contract or to such other address as such party may have notified in writing to the other for such purposes. E-mail and facsimile delivery expressly require written confirmation issued by the receiving party. Electronic read-only receipts may not under any circumstances be deemed as confirmation of notice.

23. Miscellaneous

- 23.1. Any changes and/or amendments to, or the termination of individual Contracts between the Purchaser and the Supplier shall be made in writing and signed by both parties thereto.
- 23.2. The relationship of the parties is that of independent parties dealing at arm's length and nothing in the Contract shall be construed to constitute the Supplier as an agent or employee of the Purchaser or as to have any kind of partnership with the Purchaser, and the Supplier is not authorized to represent the Purchaser as such. The Contract does not imply any employment relationship between the Supplier and the Purchaser.

The Supplier shall remain free of any direct or indirect responsibility or liability for labor, social security or taxes with respect to the Supplier and its employees assigned to the provision of the Goods or Services.

- 23.3. If and to the extent that the Supplier's delivery of all or any portion of the Goods is made impracticable by (i) the occurrence of a Contingency not attributable to the Supplier's fault or negligence, or (ii) the Supplier's compliance in good faith with any applicable law, the Supplier shall promptly provide to the Purchaser written notice of such delay or non-delivery including a description of the reason(s) for such delay or non-delivery (each, a "Non-Delivery Notice"). "Contingency" means (i) the occurrence of any event, the non-occurrence of which is a basic assumption on which a Contract is entered into or an Order is placed including, but not limited to, acts of God, fires, floods, riots, labor difficulties, embargoes and civil commotion, or (ii) any non-occurrence of an event, the occurrence of which was a basic assumption on which this Order is placed. Upon receipt of any Non-Delivery Notice from the Supplier, the Purchaser may, at its sole option and discretion, exercise any one or more of the following remedies: (i) terminate or modify all or any part of this Order; (ii) if the Supplier's capacity to deliver the Goods is only partly affected, direct the Supplier to allocate production and delivery resources among its customers, including the Purchaser, in a fair and reasonable manner; (iii) if a commercially reasonable substitute manner of delivery is available, direct the Supplier to deliver the Goods or Services to the Purchaser in such manner; and/or (iv) exercise any other right or remedy available to the Purchaser at law, in equity or under the applicable Contract. The Supplier shall promptly comply with any instructions given by Buyer in accordance with this Section.
- 23.4. The Contract constitutes the entire agreement and understanding between the parties and replaces any prior agreement, understanding or arrangement between the parties with regard to its subject, whether oral or in writing.