

## **1. TERMS CONTROLLING**

The terms and conditions of purchase contained herein (“Terms”) shall apply to all purchase orders (“Order”) made by Interfacial Consultants LLC (“Buyer”) for the purchase of goods listed on the Order (“Goods”). The recipient of the Order (“Seller”) shall be deemed to accept these Terms by a written acknowledgement, by implication (beginning of performance), or by shipment of Goods. Buyer hereby rejects any additional or different terms, including, but not limited to, those on Seller’s proposals, quotations, invoices, confirmation, or other documentation. Buyer’s failure to object to provisions contained in any communication from Seller differing from these Terms shall not be deemed an acceptance of such provisions or a waiver of these Terms. If, and to the extent that, these Terms conflict with any provisions affixed to any confirmation or other document issued by Seller, these Terms shall prevail regardless of the method of acceptance. THE TERMS OF THE ORDER ARE EXCLUSIVE. Any changes in these Terms must be agreed to specifically and in writing signed by Buyer’s duly authorized representative before becoming binding on Buyer.

## **2. QUALITY AND REMEDIES**

Except as otherwise agreed in writing, Buyer may inspect and test the Goods at destination before acceptance of the Goods (“Acceptance”) or payment. Payment for the Goods does not constitute Buyer’s Acceptance of the Goods. Seller hereby warrants to Buyer and any purchaser from Buyer (“Customer”) that the Goods will: (a) be new and free from any defects in workmanship, material, and design, (b) comply with the drawings, samples, or other specifications, if any, in all material respects, (c) be fit for their intended purpose and operate as intended, (d) be free and clear of all liens, security interests, or other encumbrances, (e) free of any third-party claim, including but not limited to any claims of infringement or violation of a trade secret. This warranty shall cover latent and patent defects notwithstanding inspection, acceptance, or payment by Buyer. Seller shall pay the costs of inspecting and testing rejected Goods. Buyer may, without prejudice to any other available remedy, require Seller, at Seller’s expense, to repair or replace defective Goods or parts thereof. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party, and Seller shall pay Buyer the cost thereof promptly and in full, and Buyer may terminate the Order for cause without limitation to any of Buyer’s other rights or remedies. These warranties and rights and Buyer’s rights and remedies under the Order are cumulative and in addition to any other warranty provided by law or equity. All warranties under these Terms shall be for the benefit of the Buyer, its successors, assigns, customers and the ultimate users of the Goods.

## **3. SHIPMENT; INSTALLMENT CONTRACTS**

If Buyer gives definite shipping instructions, Seller shall adhere to such instructions. No charges shall be allowed for packing, crating, duties, freight, and/or any other shipping services unless so specified in Buyer’s Order. Any expenses Buyer incurs through Seller’s failure to comply with these instructions will be borne by Seller. The Goods shall

be delivered to the delivery point and on the date(s) stipulated on the face of the Order, it being acknowledged that time is of the essence. Title and risk of loss shall pass to Buyer upon Acceptance of the Goods. In case of shipment in installments, Buyer may reject any non-conforming installment and treat Seller as in breach for remaining installments notwithstanding whether the non-conformity substantially impairs the value of the non-conforming installments, can be cured, and/or substantially impairs the value of all or the remaining installments. If delivery cannot be made within the time stated in the Order, Buyer shall have the right, in addition to any other remedies under applicable law, to refuse and cancel the Order without cost to Buyer and charge Seller with any loss or damage incurred as a result of Seller's failure to make delivery within the time specified or to require delivery by the fastest way possible and the charges resulting from premium transportation shall be prepaid by the Seller. Unless Buyer otherwise agrees in writing, shipments must equal exact amounts ordered and partial shipment shall be rejected. Buyer assumes no obligation for Goods shipped exceeding quantities specified in the Order and such excess quantity may be returned at Seller's expense.

#### **4. PRICE; TAXES**

The price of the Goods is the price stated on the face of the Order and includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs, and charges of Seller, unless Buyer agrees otherwise in writing in the Order. Payment will be made against correct invoices and documentation on the payment terms specified in the Order. The total price includes all freight, duties, and taxes, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment. Seller shall not include any taxes for which Buyer has furnished evidence of exemption. Where required by law, Buyer may deduct from any payments due to Seller hereunder such taxes as Buyer shall be required to withhold and pay such taxes to the relevant tax authority. Buyer shall not be liable for any business activity taxes or taxes on or measured by net income. Seller warrants that the price of Goods is not higher than Seller's price to others for the same or similar Goods in similar quantities.

#### **5. PAYMENT**

Seller shall invoice Buyer for the Order within 30 days of delivery. As full consideration for the Goods, Buyer shall pay all properly invoiced amounts due to Seller within the timeframe agreed upon by the parties, except for any amounts disputed by Buyer. Payment shall not constitute Acceptance. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods meet the requirements of the Order. Buyer shall not be held responsible for failure or delay in making any remittance nor in establishing any letter of credit for reasons beyond Buyer's control, including, but not limited to, restriction on import or payment imposed by any governmental or quasi-governmental body, agency, or authority. Buyer shall be entitled, at any time, to set off any amount owing from Seller to Buyer or any of its affiliated companies against any amount payable by Buyer.

## **6. PACKAGING & MARKING**

All Goods shipped to Buyer, including, but not limited to, hazardous, dangerous, explosive, inflammable, or toxic Goods, must be properly packaged and marked. Seller assumes all loss and liability, direct or indirect, because of failure to do so.

## **7. INFRINGEMENT**

Seller warrants to Buyer and Customer that the Goods and the sale or use of them will not infringe any United States or foreign patent rights, trademarks, copyrights, trade secrets, design rights, moral rights or any other intellectual property rights or similar rights. Buyer may cancel the Order without obligation or liability to Seller if the Goods are covered, or alleged to be covered, by any such rights owned or controlled by Seller and suit is threatened or instituted to declare such rights or claims thereunder invalid or limited in scope as to impair the commercial value of the Goods.

## **8. MODIFICATION OF CONTRACT**

Buyer has the right at any time to change the quantity, scope, specifications, time of performance, and other matters provided in the Order, or to cancel the Order, with respect to Goods not shipped by Seller and as to which Seller has not otherwise substantially changed its position by commencing manufacture or otherwise, for convenience and without cause. If any such change or termination increases or decreases Seller's costs or the time required for performing Seller's obligations, the purchase price of the Goods or the delivery schedule, as the case may be, shall be adjusted accordingly on a fair and equitable basis by negotiation, provided that proposals by Seller for such negotiation are made in writing within 30 days of Buyer's change of order or termination. No price adjustment shall be made in favor of Seller for Goods which are inventory on hand, and with regard to other Goods, Buyer shall not be obliged by such adjustment to pay more than the Seller's actual cost plus reasonable margin applicable to the Goods originally ordered. In connection with any claim by Seller for a price adjustment under this Section, Seller shall submit cost data for the Goods in such form and details as Buyer may reasonably require.

## **9. FORCE MAJEURE**

Buyer shall not be responsible or liable for its complete or partial failure to perform or delay in performance of these Terms due to acts of God, nature, hazardous weather conditions (actual or forecasted), wars (declared or undeclared), fires, floods, riots, or other hostilities, civil disorder, commotion or unrest, epidemic, pandemic, sabotage, accidents, labor disputes, contract breach or repudiation by Customer, the imposition of governmental law, ordinances, rules, regulations, directives, and actions or omissions to act (valid or invalid), inability or difficulty obtaining transportation, mishap to or delay of any carrier, forwarder, loader, or similar person or concern, boycotts, or any other event beyond the control of the Buyer. In any such event Buyer may by notice suspend or terminate the Order in its entirety or as to the Goods affected. Seller shall make delayed shipment of delivery if so instructed within a reasonable time after cessation of the force majeure event.

## **10. COMPLIANCE WITH LAWS**

Seller, and any Goods supplied by Seller, shall comply with all applicable governmental laws, regulations, and orders in the manufacture, labeling, transportation, importation, exportation, licensing, approval, or certification of the Goods purchased by Buyer. All materials used by Seller in the Goods or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials as well as environmental, electrical, and electromagnetic considerations applying to the country of manufacture, sale, or destination. Before and at the time the Goods are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Goods, containers, and packaging, together with disposal and recycling instructions, material safety data sheets, and certificates of analysis) of any hazardous material that is an ingredient or part of the Goods, together with any special handling instructions needed to advise carriers, Buyer, and its employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using, or disposing of the Goods, containers, and packaging. Seller warrants that all Goods comply with the Reduction of the Use of Certain Hazardous Substances ("RoHS") Directive and the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH") Regulation and initiatives.

Seller agrees that it will promptly comply with all requests by Buyer to execute all certifications or other actions required under Executive Order 11246.

## **11. BREACH; BANKRUPTCY**

These Terms shall continue in effect as hereinabove provided, unless sooner terminated and canceled as follows:

- a. Either party may terminate and cancel the Order if the other party breaches any of the terms, conditions, or provisions of the Terms or an Order, and fails to remedy such breach within 5 days after receipt of written notice thereof.
- b. Buyer may immediately terminate the Order if: (1) Seller becomes insolvent, commences or files any voluntary or involuntary proceeding or petition in bankruptcy in any court; (2) Seller makes any assignment for the benefit of creditors; (3) Seller enters into any composition with its creditors; (4) a receiver is appointed for any of the Seller's property; or (5) at any time or for any reason, Buyer, in its sole judgment and discretion, deems itself insecure and Seller to be unable to fulfill its obligations under the Order.
- c. Notwithstanding any of the foregoing, accrued obligations of the parties shall survive the termination and cancellation hereof.

## **12. INDEMNIFICATION**

- a. To the fullest extent permitted by law, Seller shall defend (with legal counsel reasonably approved by Buyer, such approval not to be unreasonably withheld), protect, and hold harmless Buyer, Buyer's successors, assigns, Customer, dealers, and users of the Goods sold by Buyer (collectively, "Indemnified Parties"), and each of them, from and against any and all actual or threatened claims, demands, causes of action, liabilities, whether absolute or accrued, contingent or otherwise, judgments, settlements, losses, costs, damages, and/or expense in law or equity, contract, tort, or otherwise (including, without

limitation, attorney fees, professional, expert or consultant fees, investigative costs, and costs of appeal and enforcement of this provision) of every kind and nature made against one or more of the Indemnified Parties (“Claims”) (including action by a government authority) arising out of or resulting in any way from any defective Goods, personal injury, death, or property loss or damage attributed to, or caused, wholly or partially, by the Goods, claims of infringement or contributory infringement of any intellectual property rights, or from any negligent or wrongful act or omission of Seller, or Seller’s agents, employees, or subcontractors, or any breach or failure by Seller to comply with any of Seller’s representations or warranties or other terms and conditions of the Order including any provision of these Terms.

b. In addition to Seller’s obligation to indemnify Buyer and the other Indemnified Parties, Seller specifically acknowledges and agrees that Seller has an immediate and independent obligation to defend Buyer and the other Indemnified Parties from any Claim which actually or potentially falls within the scope of this indemnification provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises when such Claim is tendered to Seller by Buyer and continues at all times thereafter.

c. Should Buyer’s use, or use by its customers, of any Goods be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, (i) substitute fully equivalent non-infringing products or services; (ii) modify the Goods so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer and its customers the right to continue using the Goods; or (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Goods.

### **13. CONFIDENTIAL INFORMATION**

All non-public, confidential, or proprietary information of the Buyer or Customer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally, by visual inspection or disclosed or accessed in written, electronic, or other form or media, and whether marked, designated, or otherwise identified as “confidential,” in connection with the Order is confidential (“Confidential Information”), solely for the use of performing the Order and may not be disclosed, exported or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; or (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party. All Confidential Information shall be promptly returned to Buyer upon request.

Any intellectual property first made or conceived by Seller in performance of this Order that was derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer, and Seller shall execute such documents necessary to perfect Buyer’s title thereto.

#### **14. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **15. BUYER'S PROPERTY**

All drawings, tools, jigs, dies, fixtures, Goods, and other items supplied or paid for by Buyer shall be and remain the property of Buyer ("Buyer's Property"), and Buyer shall have the right to enter Seller's premises and remove the Buyer's Property at any time. Buyer's Property shall be used by Seller only in its performance hereunder. Seller shall maintain Buyer's Property and shall be responsible for all loss or damage thereto, except for normal wear and tear.

#### **16. INSURANCE**

Seller shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers to fulfill its obligations under the Order or in additional amounts and coverages as Buyer may reasonably request, in each case naming Buyer and its affiliates and Customer (as applicable) as loss payees and as "additional insureds" by endorsement. Upon Buyer's request, Seller shall provide Buyer with insurance certificates and such other evidence of insurance coverage satisfactory to Buyer.

#### **17. CUSTOMER TERMS**

As directed by Buyer in writing, Seller shall comply with the applicable terms and conditions of any agreements ("Customer Agreements") Buyer receives from a Customer, or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to any Customer, or incorporate Goods into goods supplied to any Customer. For the purpose of this Section, the term "Customer" shall also include the final equipment manufacturer of goods or services into which the Goods are or will be incorporated. Buyer may in its discretion supply Seller with information regarding the Customer Agreements, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Agreements that may affect Seller's obligations under an Order. Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Agreements. If this Section conflicts with any other paragraph or Section in an Order, Buyer by written notice to Seller has the right to have the provisions of this Section prevail.

#### **18. ASSIGNMENT**

Seller shall not (whether by operation of law, merger, acquisition, or otherwise) assign, transfer, or delegate Buyer's Order or any obligations thereunder. Any purported assignment, transfer, or delegation without Buyer's written consent shall be void and constitute a material breach by Seller.

## **19. SUCCESSORS**

These Terms shall be binding on, and inure to the benefit of, the parties and to their successors and permitted assigns.

## **20. EXPORT/IMPORT CONTROL**

Seller shall control the disclosure of and access to technical data, information and other items received under this Order in accordance with and otherwise comply with applicable U.S. export control laws and regulations, including but not limited to International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (EAR). No technical data, information or other items provided by the Buyer in connection with this Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express prior written authorization of the Buyer and the Seller compliance with the EAR, and ITAR, if applicable. Seller shall immediately notify Buyer in writing if it is or becomes listed on a Debarred, Excluded or Denied Party List of an agency of the U.S. Government, or if its export privileges are denied, suspended, or revoked.

## **21. COUNTERVAILING AND ANTI-DUMPING DUTIES**

Seller warrants that all sales made under this Order are or shall be made at no less than fair value under Subtitle IV of the Tariff Act of 1930 entitled “Countervailing and Anti-Dumping Duties” (19 U.S.C. Sec. 1671 and 19 U.S.C. Sec. 1673).

## **22. IMPORTER OF RECORD; ULTIMATE CONSIGNEE**

Buyer shall not be a party to the importation of the Goods related to the transaction(s) represented by this Order and Buyer shall not in any event be designated as “importer of record” or “ultimate consignee” on any customs declaration or customs entry form. Upon request and where applicable, Seller shall provide Buyer with Customs forms, properly executed, as required for drawback claims.

## **23. ORIGIN CERTIFICATION; CONFLICT MINERALS COMPLIANCE**

Seller shall provide Buyer with a certificate of origin for each of the Goods sold hereunder and such certificate shall indicate the origin rule that the Seller used in making the certification.

Seller acknowledges that Buyer may be required to comply with Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”) which includes requirements related to the use of tin, tantalum, tungsten, and gold (“Conflict Minerals”). Seller shall source and track the chain of custody of all Conflict Minerals contained in any Goods in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. At Buyer’s request, Seller shall execute and deliver to Buyer declarations in the form of the EICC-GeSI Conflict Minerals Reporting Template as adopted by EICC-GeSI or in any other form that Buyer reasonably requests. Seller shall immediately disclose any changes to the conflict-free minerals status of any Goods. If the Buyer has reason to believe the minerals in any Goods are not conflict-free, Buyer shall place the Seller under contract review and research alternative supply sources and may immediately terminate

the relevant Order as a termination for convenience under these Terms. All Goods provided shall be “Conflict Free”, as defined in the Dodd-Frank Act.

## **24. CERTIFICATE OF CONFORMANCE**

At Buyer’s request, a Certificate of Conformance stating the Goods conform to all Order requirements shall accompany each shipment. The Seller shall have available for review all sub-tier certifications for goods and processes that support the shipment.

## **25. MISCELLANEOUS**

a. These Terms (together with the Order and the other procurement and shipment documentation provided by Buyer in connection with the Buyer’s purchase of Goods, all of which are incorporated by reference) constitute the entire agreement between the parties and supersede all prior agreements and understandings between them relating to the subject matter hereunder. No modifications of these Terms shall be binding on either party unless it is in writing and signed by both parties.

b. No waiver by Buyer of any provision of these Terms shall be effective unless made in writing. Waiver by, or failure of, Buyer to exercise in any respect any right provided for herein shall not be later deemed a waiver nor prevent Buyer from strictly enforcing any right hereunder at a later time. No waiver by Buyer of any breach of any provision of these Terms shall constitute a waiver of any subsequent breach of the same or of any other provision of these Terms.

c. The laws of the state of Buyer’s office issuing the Order as shown on the face of the Order and/or other Buyer-issued document, without reference to its conflict of laws principles, govern these Terms and all transactions contemplated by it, as well as all matters arising out of or relating to it. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed.

d. The arbitration provisions of this Section 18 will be governed by the United States Federal Arbitration Act. At Buyer’s option, exercised by written notice any time within 30 days following the service of process in a legal action, any dispute regarding the Goods, the Order or its the validity, any of these Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved exclusively by binding arbitration, conducted in the English language, as follows: (1) the arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, in a location agreed by the parties; (2) if the parties cannot agree on a location within 30 days of either party’s request for arbitration, the arbitration will be conducted in the county and state of Buyer’s office issuing the Order, and (3) the arbitrator will be selected from an AAA list using the AAA-recommended selection method. Each party will bear equally the costs and expenses of AAA and the arbitrator, and each party will bear its own costs and expenses — provided, however, (i) that the failure by one party to pay its share of the arbitration fees constitutes a waiver of such party’s claim or defense in the arbitration, and (ii) that the arbitrator may award attorney fees and costs to the substantially prevailing party. In no event shall a party be awarded punitive or exemplary damages. All arbitration proceedings shall be confidential, except if, and to the extent, disclosure is necessary to



enforce an arbitration award in a court of competent jurisdiction or is required by Customer. The arbitration award shall be final and binding upon the parties and enforceable in any court of competent jurisdiction.

e. Section headings are for convenience only and shall not be considered in the interpretation of these Terms.

f. If any provision of these Terms is to any extent illegal, otherwise invalid, or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability. All other provisions hereof shall remain in full force and effect. If permitted and possible, the invalid or unenforceable provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such provision.

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Last updated May 14, 2020.