

**PURCHASE ORDER TERMS AND CONDITIONS**

(Procurement of Goods Without Any Related Services)

**1. Definitions.** These Purchase Order Terms and Conditions (these “Terms”), together with the document to which these Terms are attached (the “Purchase Order”) and any schedules, exhibits or other documents incorporated by reference into the Purchase Order, are collectively referred to herein as the “Contract”. Capitalized terms used but not defined in these Terms shall have the meanings ascribed to such terms in the Purchase Order. The materials, equipment or other goods being supplied under the Purchase Order are referred to herein as the “Goods”.

**2. Performance and Deliveries; Title; Acceptance.** Seller shall deliver all Goods at the times and to the delivery points specified in the Contract. **Time is of the essence in the performance of the Contract.** Seller shall supply Buyer with copies of all operating manuals, drawings, schematics, diagrams and other information needed for proper maintenance and repair of all Goods. All shipments of Goods shall be accompanied by packing lists, commercial invoice, a copy of the Purchase Order, and any other supporting documents and packages needed; all these documents and packages shall include the order number appearing on the face of the Purchase Order. If the order number appearing on the face of the Purchase Order is not included on any of these documents or packages, Buyer reserves the right to reject the Goods. Buyer reserves the right to return any improperly marked shipments of Goods. Buyer shall have the right to inspect all Goods. If Buyer determines that any Goods do not comply with the requirements of the Contract, Buyer shall have the right to reject such Goods. In the event that Buyer rejects any Goods, Buyer may return such Goods to Seller at Seller’s cost and expense. Title to and risk of loss of Goods shall pass to Buyer upon delivery to Buyer and acceptance of such Goods by Buyer.

**3. Change Orders.** Buyer may at any time, and from time to time, issue written change orders that require additions to or reductions from the Goods (each, a “Change Order”). Seller shall proceed with the instructions contained in a Change Order upon receipt thereof. If compliance with a Change Order will result in Seller incurring extra cost, Seller shall notify Buyer of such extra cost within 10 days after receipt of such Change Order, and no claim for payment or reimbursement related to such Change Order shall be valid unless such notice is given by Seller within such time. No changes in or to any Goods shall be made except pursuant to a Change Order, and no claim by Seller for payment or reimbursement of any amount in excess of that contemplated by the Contract shall be valid unless such claim is made pursuant to a Change Order executed by Buyer.

**4. Warranties.** Seller warrants that all Goods (a) shall conform to all specifications, drawings, samples and descriptions furnished, specified or adopted by Buyer and be sufficient for the purpose for which purchased, (b) shall be of good quality, (c) shall be free from defects due to faulty materials, equipment or workmanship, (d) shall not infringe any valid patents, and (e) shall be delivered or rendered on the agreed time with Buyer.. Seller also warrants that Seller will convey to Buyer good title to all Goods and that all Goods will be delivered free from any lawful security interest, lien or other encumbrance. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THE CONTRACT, SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS AND NEGATES, ANY REPRESENTATION OR

WARRANTY WITH RESPECT TO ANY GOODS OR THE OTHER TRANSACTIONS CONTEMPLATED BY THIS CONTRACT (EXPRESS, IMPLIED, COMMON LAW, STATUTORY OR OTHERWISE), INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In the case of any defective or otherwise unsatisfactory Goods, Seller shall (i) at its sole cost and expense, repair or replace such Goods within 15 days after receipt of written notice of the applicable breach of warranty from Buyer (or, in the event that such repair or replacement will be ineffective as a remedy if not done or performed during a shorter period, such shorter period as may be reasonably required by Buyer) and (ii) be solely responsible for all costs and expenses of correcting the consequences of such breach of warranty, including any damage to other property or work resulting from such breach. In the case of late delivery of any Goods, Seller shall be liable for a conventional penalty of 0.5% of the total amount of the Purchase Order for every day of delay of the Good not delivered. If Seller fails to repair or replace such defective or otherwise unsatisfactory Goods within such period, Buyer may, in its sole discretion, terminate the Contract and/or repair or replace such Goods and (A) Seller shall reimburse Buyer for all costs and expenses incurred in connection with repairing or replacing such Goods and (B) in the case of a repair of such Goods by Buyer, the warranties provided by Seller under the Contract shall continue to apply to such Goods in accordance with their terms. The obligations of Seller under this Section shall expire and be of no further force or effect if Buyer does not provide written notice of a breach of warranty within one year from the date of acceptance of the relevant Goods (or if such breach relates to any Goods which were corrected or otherwise remedied under this Section after acceptance, within one year after the date of acceptance of such corrected or remedied Goods).

**5. Force Majeure.** If, as the result of a Force Majeure Event, a party is rendered unable, in whole or in part, to carry out its obligations under the Contract, the obligations of such party, insofar as they are affected by such Force Majeure Event, shall be suspended during the continuance of such Force Majeure Event *provided that* the party prevented from performing by such Force Majeure Event (a) provides the other party with written notice of the occurrence of such Force Majeure Event within two business days after the occurrence thereof, which notice shall describe such Force Majeure Event in reasonable detail and, to the extent practicable, include an estimate of the anticipated duration thereof, (b) takes all actions reasonably necessary to remedy such Force Majeure Event or its resulting effects, or otherwise remove the basis for non-performance, as soon as practicable, and (c) upon such remedy or removal resumes performance of its obligations under the Contract. The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the requirements under clause (b) above shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is deemed inadvisable, in the sole discretion of the party having the difficulty. If, due to a Force Majeure Event affecting Seller, the supply of any Goods will be delayed, Buyer may, at its option, terminate the Contract to the extent it pertains to such Goods and purchase replacement goods from third parties without liability hereunder, but the Contract shall remain otherwise unaffected.

For purposes of the Contract, the term “*Force Majeure Event*” means acts of God, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, floods, high water, washouts, arrests, restraints of government and people, civil disturbances, explosions, lack of adequate supplies of fuel, power, raw materials, labor, containers or transportation facilities, breakage, failure of or accident to (or the freezing of) wells, machines, equipment, apparatus or lines of pipe or property, strikes, work stoppages, labor difficulties, other industrial disturbances, acts of public enemy, sabotage, governmental controls (including price and allocation controls), laws, regulations, orders or actions, embargoes or, without limitation, any other causes or contingencies (whether or not of the same nature as those hereinbefore specified) beyond the reasonable control of the party claiming force majeure.

**6. Price.** The price for all Goods supplied under the Contract shall not be less favorable to Buyer than the prices currently extended by Seller to any other person or entity for the same or like Goods in equal or less quantities. In the event that Seller reduces its price for such Goods during the term of the Contract, the prices under the Contract shall automatically be reduced to such reduced prices. All extra charges of any kind, including insurance, packing and crating, will be borne by Seller unless otherwise agreed in writing by Buyer.

**7. Taxes.** All sales, use, consumer, service and excise taxes, import duties or other taxes and similar charges which Buyer or Seller may be required to pay and which are levied directly upon the transactions contemplated by the Contract shall be paid by Buyer (or if paid by Seller, reimbursed by Buyer); *provided, however*, that Seller shall not collect, and Buyer shall not reimburse Seller for, any such tax, duty or similar charge for which Buyer furnishes to Seller an exemption certificate or a direct payment permit certificate.

**8. Invoicing.**

Every invoice must reference to the Purchase Order number and should be issued for the Company name showed in the letterhead of the Purchase Order:

**INEOS Styrolution Mexicana, S.A. de C.V.**  
Avenida Insurgentes Sur No. 859, Piso 11,  
Oficina 1102, Colonia Nápoles,  
Delegación Benito Juárez  
C.P. 03810 Ciudad de México, México  
RFC: SME1101034E1

or

**INEOS Styrolution Servicios, S.A. de C.V.**  
Avenida Insurgentes Sur No. 859, Piso 11,  
Oficina 1102, Colonia Nápoles,  
Delegación Benito Juárez  
C.P. 03810 Ciudad de México, México  
RFC: SSE 0809091H1

**9. Payments and Custom Clearance.** For consignment sales, as soon as practicable after the first day of each month, Seller shall submit to Buyer an invoice setting forth the amount payable for all Goods supplied in the immediately preceding month. For direct

purchases, upon delivery of the Goods accordingly to the negotiated incoterm, Seller shall submit to Buyer an invoice setting forth the amount payable for the Goods. Buyer will pay to Seller the amount shown to be due under each invoice within 45 days after receipt of such invoice; *provided, however*, that (i) Buyer shall not be liable for or obligated to pay for any Goods if such fee, cost or expense pertains to any Goods supplied more than three months prior to the time that such fee, cost or expense is initially included in an invoice received by Buyer, (ii) the amount of any invoice shall be discounted by 2% if Buyer pays Seller all amounts shown on such invoice within 10 days after Buyer’s receipt of such invoice and (iii) in the event that Buyer questions or disputes any item on any invoice, Buyer shall have the right to withhold payment with respect to such item until the amount and validity thereof are verified. No payments made prior to acceptance of any Goods shall be construed to be an acceptance of such Goods by Buyer, in whole or in part.

Each invoice shall reference the order number appearing on the face of the Purchase Order and shall be submitted to:

If a Mexican Supplier:

Must load the invoices into the Portal EDICOM.

If an International Supplier:

By Mail:

Buyer under the Purchase Order (INEOS Styrolution Mexicana S.A. de C.V. or INEOS Styrolution Servicios S.A. de C.V.).  
Accounts Payable  
Westings Corporate Center I  
2056 Westings Avenue, Suite 200  
Naperville, Illinois 60563

E-Mailed Invoices (Domestic Goods):  
INSTY.APINVOICES@INEOS.COM

E-Mailed Invoices (Imported Goods):  
INSTY.MXIMPORTDOCS@INEOS.COM

Custom Clearance Documents:

For imports into Mexico that requires custom clearance, Seller shall send the following documents to [MXIImportdocs@ineos.com](mailto:MXIImportdocs@ineos.com):

- a) Commercial Invoice
- b) Packing List
- c) Technical, MSDS, Quality Certificates.
- d) Certificate of Origin.
- e) Bill of Lading
- f) Copy of the Purchase Order

Seller shall use appropriate packing material for all deliveries and attach a packing envelope that includes:

- a) Commercial Invoice
- b) Packing List
- c) Technical, MSDS, Quality Certificates.
- d) Copy of the Purchase Order

**10. Withholding of Payments/Deductions from Payments.** Buyer may withhold payment of any amount due to Seller to the extent

necessary to protect Buyer from loss on account of (a) any defect in any Goods that has not been remedied, (b) any claim that has been asserted (or that is expected to be asserted) against Buyer in connection with any Goods, (c) the failure of Seller to make payment to any Subcontractor or for any equipment, materials or labor (or to provide evidence that such payments have been made), (d) damage to any person or entity caused, in whole or in part, by Seller and for which Buyer may directly or indirectly be or become liable, (e) any cost or expense for which Seller is liable under the Contract or (f) any breach by Seller of any term, condition or provision of the Contract; *provided, however*, that Buyer shall pay Seller any amount so withheld as soon as practicable following the removal or remedy of the grounds for such withholding. Seller authorizes Buyer to offset and deduct from any amount payable to Seller any amounts which may be payable by Seller to Buyer, and also all amounts for which Buyer may become liable to third parties by reason of Seller's acts or omissions in performing or failing to perform Seller's obligations under the Contract.

**11. Audit.** Seller shall maintain separate books and records with respects to the supply of all Goods and retain such books and records until three years after the expiration or termination of the Contract. For purposes of verifying any information pertinent to the Contract, Seller shall provide Buyer and its auditors access to Seller's books, records and accounts; *provided, however*, that Buyer gives Seller reasonable prior notice and such access is conducted during normal working hours and in a manner that does not cause any unreasonable disruption of or to the personnel or operations of Seller. Buyer and its auditors shall have the right to make copies of and abstracts from such books, records and accounts, at Buyer's expense, which copies may be removed from the premises of Seller and retained by Buyer. The costs of any such audit shall be borne by Buyer unless Seller's computations are found to be in error in Seller's favor by more than \$350,000 MXN, in which case the costs of such audit shall be borne by Seller.

**12. Insurance.** In the event Seller is to supply Goods to Buyer's premises, Seller shall take out and maintain comprehensive automobile insurance with bodily injury and property damage combined limits of at least \$1,000,000 MXN pesos (including hired autos per occurrence/annual aggregate and non-ownership liability) for the duration of the Contract. Prior to delivering the Goods to Buyer's premises, Seller shall furnish Buyer with certification of such insurance. Such certificates shall be in a form and underwritten by a carrier or placed through a broker satisfactory to Buyer. To the extent necessary to provide coverage under Seller's insurance for the liabilities assumed by Seller under the indemnity provisions of the Contract, the Indemnified Persons (as defined below) shall be additional insureds under Seller's insurance policy. Such policy of insurance shall be primary (and not concurrent or excess) as to all other policies (including any deductibles or self-insured retentions) and self insurance that may provide coverage and shall contain a waiver of the rights of the underwriters of the insurance company of subrogation against the Indemnified Persons. Seller shall provide Buyer with written notice of any notice or other correspondence it receives from insurer, or if it otherwise becomes aware, of any change restricting or reducing coverage or the cancellation of such policy within two business days after its receipt of such notice or correspondence or of its becoming aware of such change.

**13. Safety and Compliance.** (a) Seller shall comply strictly with, and all Goods shall comply strictly with, all applicable federal, state,

local and foreign laws, statutes, ordinances, building codes, regulations, rules and orders. The Supplier/Seller acknowledges receipt of Company's Supplier Code of Conduct, which is also available at the Company's web page ([www.ineos-styrolution.com](http://www.ineos-styrolution.com)) under Company – Terms and Conditions, and confirms compliance with the principles set forth therein in all aspects of their activities that relate to Suppliers business with Company.

(b) When entering, leaving or upon any of Buyer's premises, Seller, any person or entity engaged by or otherwise having a contractual relationship with Seller to perform any services related to the Contract (each, a "Subcontractor") and any employee of Seller or any Subcontractor or any other person directly or indirectly engaged, employed or assigned by Seller or any Subcontractor to perform any services related to the Contract (each, an "Employee") shall comply with all of Buyer's rules and regulations pertaining to safety, security, order, prevention of fire or explosion or emergency conditions, including those prohibiting smoking, lighting of matches, maintaining of open fires, intoxication, speeding or other inappropriate conduct and Buyer's Life Saving Rules (collectively, the "Plant Regulations"). Seller shall immediately report any violation of the Plant Regulations to a Buyer representative. For purposes of the Contract, "Life Savings Rules" means the following rules of Buyer:

- No consumption or being under the influence of alcohol or drugs.
- No smoking outside dedicated areas.
- No work on live equipment/machines to commence without proper authorization.
- Safety critical devices/interlocks shall not be disabled or overridden without authorization.
- Persons working at height must use proper fall protection.
- No entry to confined space without proper authorization and gas test.
- No person to enter a defined danger zone where objects can fall without proper authorization.

(c) The parties acknowledge and agree (i) that Buyer will suffer significant reputational damage and loss of goodwill in the event of a violation of a Life Saving Rule by Seller, any Subcontractor or any Employee, (ii) that the actual damages that might be sustained by Buyer by reason of such a violation are uncertain and would be difficult to ascertain, and (iii) that the lesser of \$25,000 and 2.5% of the aggregate amount paid or payable under the Contract (in either case, the "Liquidated Damages Amount"), would be reasonable compensation for each such violation. Accordingly, in the event that Seller, any Subcontractor or any Employee violates any Life Saving Rule, Seller shall pay, and Buyer shall accept, an amount equal to the Liquidated Damages Amount as liquidated damages, and not as a penalty. The payment of any Liquidated Damages Amount is not intended to, and shall not be construed to, diminish or impair any other rights of Buyer hereunder or under applicable law (including the right of Buyer to terminate the Contract pursuant to Section 17(d)) or to exclude any other claims, liabilities or Losses for which

Seller is liable hereunder, including any claims, liabilities or losses under Section 13(d).

(d) In the event that Seller, any Subcontractor or any Employee violates any Life Saving Rule, all work will immediately stop (excluding any work that cannot be stopped in a safe manner, which work will stop as soon as such work stoppage can be safely put into effect) and a safety stand down will occur. Buyer and Seller will agree on essential employees that should remain on site during the work stoppage and Seller shall perform a complete housekeeping during the scheduled work stoppage to eliminate any hazards. The stoppage of work will be for as long as Buyer determines it will take to allow for a full and complete investigation of the incident and completion of the other items required under this paragraph (d). A Buyer representative will communicate the timing of the work stoppage and safety stand down to Seller. Seller shall schedule the attendance of all Employees at the safety stand down, at which a Buyer representative will explain the nature of the violation and a Seller safety representative will lead a discussion of the actions that will be taken to prevent recurrence of any violation of a Life Saving Rule and re-train all Employees with respect to the Life Saving Rules. Any such work stoppage, safety stand down and re-training shall be at the sole cost and expense of Seller. Seller shall immediately remove from Buyer's premises any Employee that violates a Life Saving Rule.

(eb) Each party will maintain its ethical conduct and avoid any activity that might result in a violation of any local and/or international applicable law related to bribery, corruption, money laundry, or any other similar applicable law. Contractor agrees and confirms that it has not and, to the actual knowledge of Contractor, its Affiliates (as defined below), Subcontractors and its and their respective directors, officers, employees, agents and representatives, have not, in connection with the transactions contemplated by this Agreement, made, offered, or promised to make, and will not make, offer, or promise to make, any payment or other transfer of anything of value, including the provision of any service, gift or entertainment, directly or indirectly, to (i) any Government Official (as defined below), (ii) any director, officer, employee, agent or representative of the other party or any of its Affiliates, (iii) any political party, official of a political party or candidate for public office or (iv) an agent or intermediary for payment to any of the foregoing; for the purpose of obtaining or influencing the award of or carrying out of this Agreement or the transactions contemplated herein. For the purposes of this Section, (A) the term "Affiliate" means any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a party and (B) the term "Government Official" means any director, officer, employee, agent or representative of any government or any department, agency or instrumentality thereof, and includes any person acting in any official, administrative or judicial capacity for or on behalf of any such government or department, agency or instrumentality. In the event that a party has any basis for a good faith belief that the other party may not be in compliance with the requirements set forth in this Section, such party shall advise the other party in writing of its good faith belief and the other party shall cooperate fully with any and all reasonable inquiries undertaken by or on behalf of such party in connection therewith, including the provision by the other party of personnel and supporting documents and sworn statements before a Public Notary, if reasonably deemed necessary by such party.

(fe) Each party hereby represents, certifies and warrants to the other party that (i) it is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any international Executive Order, List or other banned or blocked person, entity, nation or transaction pursuant to any local and/or international law, order, rule or regulation, (ii) it is not engaged in the transaction which is the subject of this Agreement, directly or indirectly, for or on behalf of, or instigating or facilitating the transactions which are the subject of this Agreement, directly or indirectly on behalf of, any such person, group, entity or nation and (iii) there has been no financial compensation in connection with the transactions which are the subject of this Agreement in violation of any local and/or international Money Laundry legislation, or any other applicable Laws regarding money laundering activities. Each party agrees to immediately notify the other party if it was, is or in the future becomes a "senior foreign political figure" or an immediate family member or close associate of a "senior foreign political figure", within the meaning of Section 312 of the USA PATRIOT Act of 2001. Each party acknowledges and agrees that the foregoing representations, certifications and warranties shall be and remain true and in full force and effect on the date hereof and throughout the term of this Agreement and that any breach thereof shall be a default under this Agreement. Each party agrees to cooperate with the other party and complete and execute such documentation as may be required in order to comply with the provisions of the Laws referenced under this Section.

(gd) Each party warrants and represents that it (i) does not engage in or condone the unlawful employment or exploitation of children in its workforce and (ii) does not engage in or condone the use of compulsory or forced labor. "Children" as used in this Section shall mean persons below the age of 18, unless the local law where any services related to the Contract are to be performed sets a lower minimum age to work, in which case the lower age will apply.

(he) In the event a party believes, in good faith, that the other party has violated this Section, such party may terminate the Contract immediately without any liability to the other party.

(if) Paragraphs (eb), (fe), (gd) and (he) shall survive the expiration or any earlier termination of the Contract.

**14. Confidentiality.** All information and materials furnished to Seller by Buyer pursuant to the Contract, as well as the contents of the Contract itself, shall be kept confidential by Seller. Such information and materials shall be used by Seller only for the transactions contemplated by the Contract, shall remain the property of Buyer and shall be returned to Buyer at the conclusion of performance of the Contract. To the extent that there is a separate agreement currently in effect between Buyer and Seller with respect to confidentiality issues, that agreement is incorporated into the Contract by reference.

**15. Employment Exclusion.** (a) No employment relationship of any kind exists nor shall exist between the employees of Seller, on the one hand, and Buyer, on the other hand, since there is no subordination or dependence of any kind on the part of the employees and the representatives of Seller with Buyer, or *vice versa*, derived under the Federal Labor Act (Ley Federal del Trabajo), the Social Security Act (Ley del Seguro Social), the National Workers' Housing Development Fund Institute Act (Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores), the individual

agreements or collective bargaining agreements which they may enter into with their counterparty or any legal provision or law that is similar and applicable in Mexico City, México.

(b) Each party releases the other party from any joint and several liability that could apply under the Federal Labor Act (Ley Federal del Trabajo), and swears under oath that it has sufficient resources of its own to meet the obligations resulting from relationships with the staff it employs and with those arising due to the Contract.

(c) It is expressly acknowledged and agreed by the parties that the relationship between the parties is exclusively one of a commercial nature and that the personnel of each party shall be governed by the employee-employer relationship with their respective employer. No relationship of management, economic dependence or availability shall survive when not expressly contracted by either of the parties.

(d) In the event that any labor law claim, dispute or process is filed in which the staff or employees working for a party sue the other party, the party that has been sued shall have the right to defend itself and the other party shall indemnify and hold harmless the party that has been sued from and against such claim, dispute or process and, if necessary accept full labor liability, and shall pay the expenses and fees of legal counsel and court fees that the party that has been sued has or is required to disburse. The obligations under this Section shall continue at all times irrespective of whether the Contract has expired or otherwise been terminated.

**16. Indemnification.** Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, their respective present, former and future directors, officers, equity holders, employees and agents and their respective heirs, executors, personal representatives, administrators, successors and assigns (the "*Indemnified Persons*"), from and against any and all claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and costs of court (collectively, "*Claims, Liabilities and Losses*"), to the extent arising out of (a) the negligence of Seller or the failure of Seller or any Goods to comply with the terms of the Contract or any law, statute, ordinance, building code, regulation, rule or order, (b) the existence or performance of the Contract (excluding Claims, Liabilities or Losses resulting from Buyer's negligence, gross negligence or intentional misconduct) or (c) any claim of infringement of any patent or other intellectual property right arising out of any Goods unless such claim relates to any particular equipment, material, the product of a particular manufacturer or a process which has been specified by Buyer.

**17. Termination.** The Contract may be terminated (a) by mutual prior written consent of the parties at any time, (b) by Buyer at any time, ~~or~~ (c) by either party if the other party is in breach of any material covenant, agreement, term, provision or condition of the Contract and has failed to cure such breach within 14 days after receipt from the non-defaulting party of a written notice of such breach or (d) by Buyer if Seller, any Subcontractor or any Employee violates any Life Saving Rule; *provided, however,* that (i) no such termination shall be effective unless the terminating party shall have given written notice to the other party of its election to terminate the Contract and (ii) such termination shall become effective on the date specified in such notice (which may not be prior to the date of receipt of such notice) or, if no such date is specified, on the date such notice is received by the non-terminating party. In the event of any termination of the Contract, the Contract shall immediately become

void and there shall be no liability on the part of either party as a result of such termination; *provided, however,* that (A) any provisions of the Contract that are required to ensure the full exercise or performance of a party's rights or obligations (including any rights or obligations accrued as of the termination date) shall survive the termination of the Contract, (B) if the Contract is terminated by Buyer for any reason other than Seller's breach of any of the provisions hereof, Buyer shall, as Seller's sole and exclusive remedy, reimburse Seller for the cost of all material, equipment or other property identified to the Contract for which Seller has become legally obligated to pay in the course of proper performance of the Contract and (C) Buyer shall be entitled to defer any payments owing to Seller to the extent of all *bona fide* claims it may have against Seller until such claims have been settled. Notwithstanding anything to the contrary contained in the Contract, a termination of the Contract for any reason shall not affect any rights or remedies of either party arising out of any breach of the Contract prior to such termination or the right to receive payment for any amount due hereunder at the time of termination.

**18. Benefit and Burden.** The Contract shall inure to the benefit of, and shall be binding upon, the parties and their respective successors and permitted assigns.

**19. Counterparts; Electronic Signatures.** The Contract may be executed by the parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same agreement. A signature of a party transmitted to the other party by facsimile, PDF or other electronic means shall constitute the original signature of such party for all purposes.

**20. Third Party Rights.** Nothing in the Contract shall be deemed to create any right in any creditor or other person or entity not a party thereto (other than the Indemnified Persons) and the Contract shall not be construed in any respect to be a contract in whole or in part for the benefit of any other third party.

**21. Amendment and Waiver.** No amendment, modification, restatement or supplement of the Contract shall be valid unless the same is in writing and signed by the parties. Except as otherwise specifically provided for herein, no amendment or modification of the Contract shall be effected by the sending, acknowledgment or acceptance of any purchase order, acknowledgment or other form containing terms or conditions at variance with or in addition to those set forth in the Contract. No waiver of any provision of the Contract shall be valid unless in writing and signed by the party against whom that waiver is sought to be enforced. No failure or delay on the part of either party in exercising any right, power or privilege under the Contract, and no course of dealing between the parties, shall operate as a waiver of any right, power or privilege under the Contract. No single or partial exercise of any right, power or privilege under the Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege under the Contract. No notice to or demand on either party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of either party to any other or further action in any circumstances without notice or demand.

**22. Assignments.** Neither the Contract nor any right, interest or obligation under the Contract may be assigned by either party without

the prior written consent of the other party and any attempt to do so shall be null and void; *provided, however*, (a) that no such consent shall be required for an assignment for collateral purposes or to a successor in interest of all or substantially all of the assets or business of a party to which the Contract relates that assumes, in writing, all of the obligations of such party under the Contract and (b) no assignment by a party of any of its rights, interests or obligations under the Contract shall relieve such party of its obligations under the Contract unless the other party expressly agrees otherwise in writing.

**23. Severability.** Should any clause, sentence, paragraph, subsection or Section of the Contract be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of the Contract, and the parties agree that the part or parts of the Contract so held to be invalid, unenforceable or void will be deemed to have been stricken from the Contract as if such stricken part or parts had never been included in the Contract.

**24. Applicable Law.** THE CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF MEXICO, SPECIFICALLY WITH THE MEXICO CITY ONES, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall not apply to the Contract and are expressly disclaimed by the parties.

**25. Submission to Jurisdiction.** Each party hereby (a) irrevocably submits to the personal jurisdiction of any state or federal court sitting in Mexico City, México, over any claim or dispute arising out of or relating to the Contract and irrevocably agrees that all such claims and disputes shall be heard and determined in such state or federal courts, and (b) irrevocably waives, to the fullest extent permitted by applicable law, any objection it may now or hereafter have to the laying of venue in any proceeding brought in any state or federal court sitting in Mexico City, and any claim that any such proceeding brought in any state or federal court sitting in Mexico City, has been brought in an inconvenient forum; *provided, however*,

that nothing contained in this Section is intended to waive the right of either party to remove any such action or proceeding commenced in any such state court to an appropriate federal court to the extent the basis for such removal exists under applicable law. Each party hereby irrevocably agrees that service of process may be made on it by mailing, by certified mail, a copy of such process to such party. Each party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section shall affect the right of either party to serve legal process in any other manner permitted by law.

**26. Interpretation.** In the Contract, unless a clear contrary intention appears, (a) all terms defined in the singular shall have the same meanings in the plural and *vice versa*, (b) the word “including” (and with correlative meaning “include”) means including, without limiting the generality of any description preceding such term, (c) the captions and headings contained in the Contract shall not be considered or given any effect in construing the provisions thereof if any question of intent should arise and (d) no provision of the Contract shall be interpreted or construed against either party solely because that party or its legal representative drafted such provision.

**27. Expenses.** Except as otherwise expressly provided in the Contract, each party shall pay its own expenses incident to the Contract, including all legal and accounting fees and disbursements.

**28. Conflicts.** In the event of any conflict between these Terms and the terms of the Purchase Order, the terms of the Purchase Order shall govern and control.

**29. Entire Agreement.** The Contract sets forth all of the promises, agreements, conditions, understandings, warranties and representations between the parties with respect to the matters contemplated thereby, and supersedes all prior agreements, arrangements and understandings between the parties with respect to the matters contemplated thereby, whether written, oral or otherwise. There are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, between the parties concerning the subject matter of the Contract except as set forth therein.