

**Purchase Order Terms and Conditions  
The Americas**

**1. Acknowledgment and Acceptance:**

- 1.1 You (also referred to as "Seller") shall acknowledge receipt of our purchase order (the "Purchase Order") without delay.
- 1.2 Acceptance of our Purchase Order (whether made by written or oral acknowledgment or shipment of the goods or performance of the services subject to and specified in our Purchase Order, or any part thereof) shall constitute acceptance of these terms and conditions. Such goods, services and parts thereof are referred to herein collectively as the "Goods".
- 1.3 Our purchase from you will be only in accordance with the terms of our Purchase Order, these terms and conditions, the Specifications (as defined below), and any written agreement signed by you and us in connection with the Purchase Order. No conduct by us shall be deemed to constitute acceptance of any of your terms and conditions and we expressly object to any additional or different terms in any quotation, acknowledgment, or other document of Seller.

**2. Delivery and Identification of Goods:**

- 2.1 Goods shall not be dispatched prior to receipt by you of our written Purchase Order.
- 2.2 The Goods shall be delivered (and all work associated therewith shall be completed) by the date(s) specified in our Purchase Order or as otherwise agreed by us in a written document signed by us (the "Delivery Date(s)").
- 2.3 Time is of the essence in the performance of your obligations hereunder and you shall use your best efforts to meet the Delivery Dates. If you fail to commence performance of the work on receipt of our Purchase Order, or it appears to us that you may not be able to complete the work or deliver the Goods by the Delivery Date, or you fail to do so, we may terminate the Purchase Order or any part thereof at any time in accordance with the terms hereof.
- 2.4 Without prejudice to any other remedy, if the Goods are not delivered on the Delivery Date(s) or without certificates, identification or documentation in full compliance with our requirements, we shall be entitled to refuse the Goods. We shall also be entitled to recover from you (or deduct from our payment to you), by way of liquidated damages and not as a penalty (either directly or by deduction from any monies due or which become due to you) a sum equivalent to 1/4% of the purchase price set forth in our Purchase Order (the "Purchase Price") for each day's delay up to a maximum of 10% of our Purchase Price (or such other amount as may be specified in the Purchase Order).
- 2.5 Delivery shall not be deemed complete until all Goods and all other related deliverables (including manuals and other documentation) and services have been actually received and accepted by us, notwithstanding any prior payment or agreement by us to pay transportation charges. We shall have the right to reject any nonconforming Goods and you shall assume title and risk of loss of all nonconforming Goods and shall promptly reimburse us for all costs incurred by us as a result of such rejection of nonconforming Goods. Payment for Goods delivered or inspection by us shall not constitute acceptance of the Goods and shall not relieve you of your warranties or other obligations hereunder.
- 2.6 Goods delivered in excess of the amount specified in the Purchase Order may be refused and returned at your expense.
- 2.7 All equipment, fittings, accessories and documentation which may not have been specifically mentioned but which are necessary for the efficient working of the Goods shall be deemed to have been included in the Purchase Price. All such items shall be completed and delivered to us whether such details are mentioned in the Purchase Order or not.
- 2.8 Each package or case delivered hereunder shall be clearly marked with your name and order number and our Purchase Order number and reference information.
- 2.9 You shall be responsible for proper packaging, loading and tie-down to prevent damage during transportation. No charge will be allowed for packing, crating, loading, or storage without our written permission.

- 2.10** All Goods shall be suitably packed to meet or exceed the criteria established by U.S. Department of Transportation and other applicable international shipping regulations, and to withstand normal freight handling and extended periods of storage. If the Goods or any parts thereof are damaged due to faulty or inadequate packing, the damaged Goods or parts thereof shall be repaired or replaced at your expense whether or not delivery has been accepted. The risk of loss or damage in transit shall always remain with you.
- 2.11** With each shipment, you agree to furnish us with all information as is reasonably necessary to assist us in using, handling, storing, and distributing the Goods in compliance with all applicable laws and regulations, including but not limited to, a completed Material Safety Data Sheet (U.S. Department of Labor Form LSB-00S-4) or an equivalent safety data sheet or form acceptable to us. You agree to hold us harmless from and against all liabilities, claims, fines, and penalties that may arise out of the transportation, delivery, use, handling, storing, and/or distribution of the Goods resulting from any such information that does not meet the foregoing requirements.
- 2.12** Without limiting the generality of clause 2.11, you shall provide us in writing with such information relating to any materials supplied and/or used by you in connection with the Goods and our Purchase Order as is necessary to ensure it will be safe and without risk to health when properly handled, stored, transported and used. Without limiting the generality of the above, you shall supply at your own expense, such certificates of analysis, tests, and certificates of origin as are required by our Purchase Order in connection with the Goods or required by law. Such information shall be delivered no later than the Goods to which it relates and shall be addressed for the attention of the Purchasing Department. Invoices will not be processed for payment unless such information is supplied as requested.
- 2.13** Unless otherwise agreed to by the parties and specified on the face of the Purchase Order, delivery terms shall be DDP (Incoterms 2010) with all risk and shipping charges borne by the Seller. When delivery terms are agreed as FCA (Incoterms 2010) nominated shipping point, all deliveries shall be made by common carrier(s) designated by us. Title and risk of loss shall pass to us at the agreed shipping facility indicated by us and we shall have the obligation to insure once title and risk passes; provided that Seller is responsible for correct documentation required for transport, proper packaging, loading, drayage and tie-down (if applicable) and all costs associated therewith. If Seller ships FCA using a carrier not designated by us, Seller shall bear responsibility of the freight charges. Absolutely no freight charges added to invoices will be paid unless expressly listed on the Purchase Order or otherwise agreed to in writing by us.
- 2.14** Unless otherwise specifically agreed to in writing by us, you shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the Purchase Order. You shall be solely responsible for managing your inventory with respect to Goods purchased and sold hereunder.
- 2.15** All Goods are subject to our or its designee's inspection, including the United States Government if applicable, and approval at any reasonable time during manufacture or within a reasonable period of time after delivery. Such inspection shall not relieve you from responsibility or liability for the Goods or be interpreted in any way to preclude our right to reject or revoke acceptance of the Goods. Goods rejected by us will be held for your disposition and if not removed within ten days of notice may be returned to you at your cost. Our failure to perform an inspection shall not be deemed an acceptance of any Goods.

### **3. Prices and Payment:**

- 3.1** Prices shall remain fixed until the delivery and acceptance of all Goods and required documentation and the completion of all related work required hereunder in accordance with these terms and conditions.
- 3.2** Payment for the Goods shall not constitute acceptance thereof.
- 3.3** Unless otherwise stated in our Purchase Order, we shall pay the Purchase Price within 90 days of the later of (i) date of receipt by us of a proper invoice and (ii) date of receipt by us of the Goods or completion of the services covered by our Purchase Order.
- 3.4** No invoice will be accepted or processed for payment unless it refers to the Purchase Order number, is appropriately addressed and provides sufficient detail with respect to each item invoiced.
- 3.5** In the event that payment is made before delivery of any or all of the Goods you hereby grant to us, and we shall have, a security interest in the Goods, components and/or raw materials used in or purchased or designated for the manufacture of the Goods or purchased using any money paid by us

(or its subsidiaries or agents) to you (or on your behalf), which security interest shall attach to the Goods, components and such raw materials immediately upon your receipt of such payment. You also agree to execute and file (or, at our discretion, permit us or our agents to file), or take such other reasonable actions as we deem necessary, in order to evidence such security interest, including the filing of UCC statements, at your cost.

#### **4. Representations, Warranties and Covenants:**

- 4.1** You acknowledge that we are at all times relying on your knowledge and skill and on your representations and warranties set forth herein.
- 4.2** You hereby represent, warrant, and covenant to us that:
  - 4.2.1** The quantity, quality and description of the Goods and all components, raw materials and related work shall be as specified in our Purchase Order and/or in any applicable agreement, specification or drawing supplied by us to you or agreed in writing by us (collectively, the “Specifications”).
  - 4.2.2** The Goods shall comply with, and any services shall be performed in accordance with, all applicable laws, regulations and industry standards, including without limitation as to environmental matters and good engineering practices, and when work is performed at our site, our safety regulations and you shall at all times comply with all applicable laws and other governmental requirements.
  - 4.2.3** The Goods shall be new and shall not have been previously used and shall be free from defects in design, material and workmanship, merchantable, fit for any purpose we specify in the Purchase Order or by implication make known to you at the time the Purchase Order is placed (the “Purpose”).
  - 4.2.4** You shall convey to us good title (free and clear from all liens, encumbrances, claims, and other defects in title) to all Goods delivered to us.
  - 4.2.5** The Goods, the process of their manufacture, and the use of the Goods for the Purpose and any purpose for which they are customarily intended will not infringe any U.S. or applicable foreign patent claim or other intellectual property rights of a third party.
  - 4.2.6** All documents, including without limitation invoices, and all information submitted by you in support of any costs shall constitute a true, accurate and complete description of the Goods, activities and transactions to which they pertain.
  - 4.2.7** All samples provided to us by you shall be free from defects in design, material and workmanship, and no Goods delivered hereunder shall be of a lesser quality or standard than the corresponding samples or previous supplies received by us from you without our prior written approval.
  - 4.2.8** All work and services performed in connection with or related to our Purchase Order and/or the Goods shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable and all equipment and tools provided will at all times be maintained in first class condition by you. We reserve the right to require the replacement of any personnel, tools or equipment that do not comply with the foregoing provisions at your cost.
  - 4.2.9** You have the right and authority to agree to these terms and conditions and perform all applicable obligations and undertakings under the Purchase Order and you have not made any agreement with any other party that might conflict in any way with these terms and conditions or any terms set forth in the Purchase Order.
  - 4.2.10** All expenses and obligations you incur with any third party shall be your obligation and not ours, and that we shall not be obligated, unless we so elect in writing, to make any payment to such third party.
- 4.3** Where you have the benefit of warranties in relation to components comprised in the Goods, the benefit of such warranties shall be assignable and hereby assigned to us. We may assign warranties provided by you to our customers.
- 4.4** All warranties set forth herein shall survive acceptance of Goods provided hereunder or termination of the Purchase Order and are in addition to any warranties of additional scope given to us by you. The warranties contained in this Article 4 are in addition to and are not to be construed as restricting or limiting any of our warranties or remedies, express or implied, which are provided under the Purchase Order or at law or in equity. Any attempt by you to limit, disclaim or restrict any such warranties or remedies of ours, in any manner whatsoever shall be null, void, and ineffective. Inspection, test,

acceptance, or use of the Goods by us shall not affect your obligations under this warranty, and shall survive such inspection, test, acceptance, and use.

**5. Defective Goods or Services:**

**5.1** If any Goods are defective or fail to meet the requirements of our Purchase Order or the warranties set forth herein during the Warranty Period (as defined below), we reserve the right to, at our sole discretion, either:

**5.1.1** Require you to remedy, at your own expense, any defects that may arise in the Goods and any work related thereto;

**5.1.2** Return the Goods for repair or replacement or require replacement services within a period of time specified by us at your cost;

**5.1.3** Carry out any necessary rectification and then charge your account for such work; or

**5.1.4** Require that you refund the full Purchase Price within 30 days of our notice and terminate the Purchase Order.

**5.2** “Warranty Period” shall mean the longer of: (i) 18 months after the date the Goods are received by us; or (ii) 12 months after the date that the Goods have been put into service for their specified use; provided, however, that in the event a defect or non-conformity to the applicable specifications arises within such period but does not become apparent until such period has expired, the term Warranty Period shall mean the period commencing on the date such defect or non-conformity became apparent and ending 12 months thereafter. The Warranty Period in respect of any repaired, replaced or corrected Goods shall recommence for a further period of 12 months from the date of completion of the repair, replacement or correction of the defect or damage.

**6. Indemnity:**

**6.1** Acceptance of the Purchase Order constitutes an agreement by you to indemnify us and our successors and assigns in respect of and, if we require, to defend us and our subsidiaries, affiliates, subcontractors, agents and representatives, and each of our respective officers, directors, employees, successors and assigns (collectively, the “Pall Parties”) against all liability, loss, damage, injury (involving any person or property and any action, claim or demand) and charge, cost and expense, including reasonable attorneys’ fees, internal processing costs, rework and remanufacturing costs, sustained by or incurred by us by reason of failure of the Goods to conform to the warranties contained herein or in our Purchase Order or breach by you of any of your obligations hereunder or negligence or willful misconduct by you, your employees, representatives or agents. Such indemnity shall be in addition to any other remedies afforded by law, contract or equity and shall survive termination of the Purchase Order.

**6.2** You shall also, at your expense, defend any suit or proceeding brought against any of the Pall Parties based on a claim that the Goods or any component part furnished hereunder infringe any U.S. or foreign patent (except infringement resulting from adherence to Specifications provided to you by us) or other intellectual property rights of a third party. You shall pay all damages, costs and attorneys’ fees awarded in any such suit or proceeding and, at our discretion, either: (i) at your expense obtain through negotiation the right for us to continue to purchase and/or use the Goods; (ii) rework the Goods so as to make them non-infringing while preserving their original functionality; (iii) replace the Goods with functionally equivalent non-infringing Goods; or (iv) refund us the amounts paid hereunder.

**7. Tools; Materials:**

**7.1** With the exception of and specifically excluding all tools, tooling and materials owned by the United States Government (“Government Property”), all special dies, tooling, molds, patterns, jigs, fixtures, and any other property which we furnish to you or specifically pay for to be used by you in the performance of the Purchase Order (collectively “Pall Equipment”), shall be: (a) our property and at all times remain our property; (b) subject to removal at any time upon our instruction; (c) used exclusively with respect to the manufacture of Goods hereunder for us; (d) held in bailment at your risk and separate from other assets kept at your facility; (e) maintained by you at your cost in good repair and working condition; (f) all of our property should be marked with “Property of Pall Corporation”; and (g) insured by you at your expense while in its custody or control in an amount equal to the replacement cost, with us named as loss payee. You shall indemnify us against all liability, loss, damage and cost, including reasonable

attorneys' fees, sustained by us arising from a claim by your employees, agents or consultants for bodily injury or death in connection with the use or operation of any Pall Equipment or Government Property while in your care, custody and control.

- 7.2** Where we provide free issue material for incorporation into the work, you shall use such materials economically, and any surplus shall be accounted to us and disposed of in accordance with our instructions. Waste, loss or damage to such materials arising from poor workmanship or your failure to maintain such materials in good order or condition shall be made good at your expense, replacements being of equivalent quality and specification and subject to our approval.

**8. Changes:**

- 8.1** We may by written notice or change order make any changes to the Purchase Order, including changes to the quantities originally ordered, the Specifications, drawings, or delivery date(s). You shall perform all variations to the work required by us without delay. You shall promptly advise us in writing of the reasonable effect of the change on price and delivery and an equitable adjustment shall be made, to the extent deemed necessary by us. Any claim for adjustment must be asserted, and written notice thereof provided by you to us, within 30 days from the date when the change is ordered.
- 8.2** No variation or qualification of the Purchase Order, these terms and conditions or the Specifications shall be valid unless agreed by us in writing. Any action on our part in variance with such documents shall not constitute a waiver thereof and we shall continue to be entitled to rely upon all terms and conditions contained therein. We shall also be entitled to rely on any statement, warranty, or representation made by any of your employees or agents.
- 8.3** You shall carry out variations which are required, and which have arisen as a result of an act or omission or default by you, at your own cost.

**9. Subcontracting:**

- 9.1** Our Purchase Order is placed subject to the work being carried out by you. You may not assign, transfer or subcontract our Purchase Order or any part thereof without our prior written consent, which consent shall not release you from your obligations and liabilities hereunder or under the Purchase Order. Any purported assignment, transfer, or subcontract without such written consent shall be void and ineffective.

**10. Force Majeure:**

- 10.1** Under no circumstances shall Pall have any liability for any breach relating to non-performance or underperformance caused by extreme weather, natural disaster, fire, accident or other act of God; strike, lock out or other labor shortage or disturbance; lock down, boycott, embargo or tariff; terrorism or act of terrorism, war or war condition or civil disturbance or riot; failure of public or private telecommunications networks; delay of carriers or other industrial, agricultural or transportation disturbance; failure of normal sources of supply; epidemics, pandemics, contagion, disease or quarantine; law, regulation or any act of government; or any other cause beyond Pall's reasonable control. Pall's performance shall be excused and deemed suspended during the continuation of such event or events and, for a reasonable time thereafter, delayed or adjusted accordingly.

**11. Confidential Information:**

- 11.1** If we disclose or grant you access to any research, development, technical, manufacturing, economic, or other business information or know-how of a confidential nature, of ours, our customers' or other vendors', whether reduced to writing or not, you will not use or disclose any such information to any other person or company at any time, without the prior written consent of: (i) a Corporate Officer of Pall Corporation and at our request, you will execute our standard Confidentiality Agreement; or (ii) the United States Government ("Government") in the case that the Government has rights to the data, tooling or designs.
- 11.2** All of our, our customers' or other vendors' research, development, technical, manufacturing, economic, or other business information or know-how of a confidential nature shall at all times remain our, our customers' or other vendors' property. Unless otherwise agreed to in writing, you shall not be entitled to use such information to develop or apply for any intellectual property rights, whether rights to patents, designs, trade secrets, copyrights, databases, know-how or otherwise, registered or unregistered, including applications or forms of protection equivalent or similar in effect to any of such

rights anywhere in the world. Nothing in these terms and conditions shall be construed or interpreted to limit or restrict the rights of the Government with regard to data, tooling or designs it owns or has a right to use.

## **12. Intellectual Property:**

- 12.1** Any specification supplied by us to you or specifically produced by you for us, in connection with our Purchase Order, together with the copyright, design rights or any other intellectual property rights therein, shall be our exclusive property. You shall not disclose to any third party any such specification except to the extent that it is or becomes public knowledge through no fault of yours; or as required by law, provided that you give us immediate notice of such legal requirement and cooperate with our attempts to acquire a protective order; or for the purpose of fulfilling our Purchase Order, to the extent that the third party is under an obligation of confidentiality no less stringent than as stated herein. You shall not use any such specification except to the extent that it is for the purpose of fulfilling our Purchase Order.
- 12.2** If we have commissioned you to produce a design or specification or drawing in our Purchase Order, you agree that the commissioned work is a "Work for Hire", and that we, as the entity for which the work is prepared, shall own all right, title and interest in and to the work, and any other intellectual property rights that may arise from the work. You further agree that to the extent that the work is not a "Work for Hire", you will assign to us ownership of all right, title and interest in and to the work, including ownership of the entire copyright or any other intellectual property rights in the work. You agree to execute all papers necessary for us to perfect its ownership of the entire copyright or other intellectual property rights in the work.
- 12.3** You represent and warrant that the work you create or prepare for us will be original, will not infringe upon the rights of any third party and will not have been previously assigned, licensed or otherwise encumbered.

## **13. Termination:**

- 13.1** In the event of any default by you in the performance of any obligations, including, the failure to deliver any Goods by the required date or failure to carry out our reasonable instructions, we may, where such default is capable of remedy, give you written notice to cure such default within a specified time. If you fail to comply with the requirements of the notice, or in our sole opinion your default is incapable of remedy to our satisfaction, we shall be entitled to terminate the Purchase Order in whole or in part, immediately, by serving notice in writing to you to such effect, without prejudice to any other rights under the Purchase Order or otherwise, and we shall have the right to retain any Goods previously supplied under the Purchase Order.
- 13.2** We shall also be entitled to terminate our Purchase Order, with effect immediately, in the event you are adjudicated to be insolvent or bankrupt, are, in our sole opinion, unable to satisfy your financial obligations as they become due, or you cease or threaten to cease, to carry on business or enter into liquidation.
- 13.3** We shall also be entitled to terminate this Purchase Order at any time, in whole or in part, by serving notice to you. Upon receipt of such notice, you shall cease all performance except to the extent provided in the notice of termination. In such event, we shall make payment to you (as full and final settlement of all claims which you may have against us as a result of termination) for all work satisfactorily performed up to the date of termination. This shall include the repurchase by us at cost of all materials which have been irrevocably purchased by you for incorporation in the Goods, except to the extent such materials are damaged or not in their original packaging, can be used by you for other customers, returned to the seller thereof or re-sold to a third party. In no event will we be required to reimburse you for indirect, consequential, incidental or special damages, including prospective profit or overheads.
- 13.4** You acknowledge your obligation to take all reasonable steps to mitigate liabilities arising from any termination.
- 13.5** Termination shall not relieve either Party of liability with respect to any breach or with respect to rights and obligations based upon any matter which occurred prior to termination.

#### 14. Insurance:

14.1 You shall maintain, at your own expense and through a carrier with an A.M. Best rating of A- or better, insurance coverage with limits typically purchased by companies of similar size in your industry; provided, however, at a minimum you will maintain Commercial General Liability Insurance including Products/Completed Operations and Contractual Liability with minimum limits of \$2,000,000 for bodily injury/property damage for each occurrence, naming Pall Corporation as an additional insured and waiving any rights of subrogation against us. You will provide us with a certificate of insurance evidencing such coverage and will promptly furnish copies of endorsements and/or policies upon request. The limits and insurance policies/coverages identified in this section are minimum requirements, and shall in no way define or limit the obligation of Seller in the event of loss.

#### 15. Compliance:

15.1 You warrant that all Goods furnished by you in performance of our Purchase Order and all work related thereto will comply fully with the Occupational Safety and Health Act of 1970, as amended, the state plans approved under such Act, and the regulations thereunder, as well as the standards developed by standards-setting organizations (such as American National Standards Institute, American Society of Safety Engineers, Underwriters Laboratories and National Fire Protection Association), to the extent applicable to such Goods, and in addition to any other rights or remedies which we may have, you shall indemnify, defend and hold us harmless from and against any and all claims, loss or liability arising from failure of such Goods to comply therewith.

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

15.3 You also agree that, as applicable, you will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

15.4 By accepting our Purchase Order, you certify that the Goods provided hereunder shall be produced and provided in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, and that each invoice submitted hereunder shall be correct and authentic and the only one issued for the Goods.

15.5 By accepting our Purchase Order, you certify that you are in compliance and shall at all times remain in compliance with all applicable U.S. laws and regulations, including without limitation, the Sarbanes-Oxley rules and regulations and the U.S. Foreign Corrupt Practices Act of 1977, as amended, and all other applicable corporate compliance, anti-corruption and anti-bribery laws.

15.6 If the Goods contain hazardous materials or toxic substances you shall test, register, certify, transport, package, label, mark, provide the requisite notice and otherwise handle them in accordance with all applicable federal, state and local laws, rules and regulations, and all amendments, standards and rulings issued thereunder, including, as applicable, the Federal Hazardous Materials Transportation Act, the Federal Toxic Substances Control Act, the Federal Poison Prevention Packaging Act of 1970, the Occupational Safety and Health Act of 1970, the Department of Transportation's hazardous materials regulations (49 CFR Parts 107, 171-177), the International Air Transport Association's restricted articles and radioactive materials regulations, and Proposition 65 of the California Health & Safety Code, Section 25249.5, et seq., including the list of chemicals, found at title 27 of the California Code of Regulations, sections 25000 to 27001, in each case as supplemented, modified and/or superseded from time to time.

15.7 To the extent applicable, you shall comply with federal procurement regulations and will hold us harmless to the full extent of any claim, suit, loss, cost, damage, expense (including attorneys' fees), or liability resulting directly from your failure to comply with any applicable federal procurement regulation covered by the Federal Acquisition Regulations, including, but not limited to, the Federal

Procurement Integrity Act, defective pricing as per the Truth in Negotiations Act, or any disclosed or applicable cost accounting standard as promulgated by the Cost Accounting Standards Board or the United States Government.

**15.8** You will provide annually to us by December 31 of each year, an accurate and complete North American Free Trade Agreement (NAFTA) Certificate of Origin for those Goods and parts thereof that qualify for NAFTA and an accurate and complete Country of Origin affidavit for all Goods and parts thereof. The NAFTA Certificate of Origin shall be completed in accordance with regulations published by the U.S. Department of Treasury in 19 C.F.R. Sec. 181.11 et seq. and any amendments thereto, and in accordance with instructions issued annually to you by us. In the event that you fail to comply with this requirement, we will charge back to you and you will promptly reimburse us for all import duties, penalties and taxes paid by us as a result of your non-compliance. We reserve the right at any time to charge you a \$250 non-compliance charge per product part number.

**15.9** You will provide all information required to comply with any applicable import and export laws and regulations, including but not limited to import classification (such as Harmonized Tariff Schedule), export classification (such as Export Control Classification Number or U.S. Munitions List Category), and country of origin of all Goods supplied under the Purchase Order. You must provide to us the import classification, export classification, and country of origin for any Goods you will supply to us on the form and in the format required by us within five (5) working days of your acceptance of the Purchase Order. In addition, the relevant information must also appear on the commercial invoice and the packing list. If applicable, you agree to comply with U.S Customs Security Filing ("ISF") requirements and agree to include the following "ISF data elements" on the commercial invoice:

- (1) Manufacturer name and address
- (2) Seller name and address
- (3) Buyer name and address
- (4) Ship to name and address
- (5) HTSUS number
- (6) Country of Origin

For ocean shipments, you will provide the invoice to us, including the "ISF" data, at least 72 hours prior to Goods being laden on the vessel in the foreign port. Failure to provide such invoice on a timely basis may result in the rejection of the associated Goods.

You must immediately notify us of any change in the import or export classification or country of origin of the Goods.

**16. Miscellaneous:**

**16.1** Inspection: We may, at all reasonable times and upon reasonable notice, perform such inspections and/or audit at your facilities, as we deem necessary to assure ourselves of your compliance with applicable laws and regulations, our Purchase Order and these terms and conditions. The United States Government may also engage in the same inspection and audit activities as we can.

**16.2** No Waiver: Our failure to insist on your strict performance of the Purchase Order or any provision(s) of these terms and conditions at any time shall not be construed as a waiver by us of performance in the future.

**16.3** Set-Off: All costs, damages or expenses for which you are liable to us may be deducted from any monies due or becoming due to you, or may be recovered from you by action at law or otherwise.

**16.4** Security for Performance: If required by us, you shall provide a parent company guarantee, bond or guarantee from a bank for the due performance of the Purchase Order. If we have reasonable grounds to believe that any advance payment(s) from us are at risk we may request a full refund of any amounts paid. If a full refund is not received within seven days of our request, we may call on the parent company or banker's guarantee to cover our payment(s).

**16.5** Entirety: Any preprinted or boilerplate terms and conditions on any documents issued by the Parties, including without limitation, any acknowledgements issued to us are hereby deleted and declared null and void. Our Purchase Order, these terms and conditions, the Specifications and each agreement(s)



signed by you and us in connection with the Purchase Order (including any Non-Disclosure or Confidentiality Agreement) constitute our entire agreement. They may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding on us unless in writing, signed by our duly authorized representative.

- 16.6** Interpretation: Should any error, omission, deficiency, ambiguity, or contradiction occur within the various parts of the order documentation or between such documentation and any applicable code, law or statutory regulations, you shall immediately and in writing, bring the same to our attention, and shall not proceed or continue with your obligations affected by the ambiguity until written clarification by us has been provided to you. Any and all additional costs incurred by either Party as a result of your failing to so notify us shall be solely for your account.
- 16.7** Survival: All provisions of these terms and conditions and the Purchase Order setting forth representations, warranties, indemnification obligations, confidentiality, non-solicitation and non-competition obligations by either Party, all obligations which accrued prior to termination of the Purchase Order and the general (miscellaneous) provisions herein shall survive the termination, cancellation or expiration of the Purchase Order.
- 16.8** Governing Law; Jurisdiction: The Purchase Order shall be governed by the laws of the State of New York, regardless of conflict of laws principles, and the Parties hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Purchase Order and the purchase and supply of the Goods, parts thereof and/or all work and documentation relating thereto. A judgment, order or decision of such courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any court of any state, country or other jurisdiction. Service of process by mail relating to or in connection with any dispute hereunder or under the Purchase Order shall be deemed sufficient for all purposes, and you hereby waive any claim related to such service based on insufficient service of process or similar claim. Notwithstanding the foregoing, for orders where the end user is the United States Government, federal government regulations shall take precedent, and disputes involving the United States Government shall be governed solely by federal law. In addition, except as may be expressly set forth in these terms and conditions with the United States Government Contracting Officer's express consent. Seller shall not acquire any direct claim or direct course of action against the United States Government.