

CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Conditions of Purchase.

“we” or “us” means the Keto Mining Pumps and Systems company which issues the Purchase Order.

“you” means the person who is party to the Contract with us.

“Business Day” means, in respect of any notice to be served under or in connection with the Contract, any day (other than a Saturday or a Sunday) on which banks in the town in which the recipient has its principal place of business are open for business.

“these Conditions” means these Conditions of Purchase (as revised from time to time).

“Contract” means the contract (as revised from time to time) between you and us relating to our purchase of the Goods from you, comprising of the parts described in clause 2.4 below.

“Defect” has the meaning set forth in Section 4.4.

“Goods” means the goods (or any part of them) to be supplied by you to us under the Contract.

“Group Companies” means the other members of any group of companies to which we belong from time to time.

“Intellectual Property” means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, computer software, know-how, and any other subject matter, material, or information that is considered by us to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights, including the Uniform Trade Secrets Act.

“Liabilities” has the meaning set forth in Section 13.1.

“Materials” means all materials, equipment, tools, parts, components, drawings, schematics, diagrams, illustrations, specifications (including the Specification), documents and data or any part of them.

“Purchase Order” means our purchase order or, in the absence of a purchase order, our other written instructions to you to supply the Goods, which (in either case) incorporate these Conditions.

“Specification” means, in respect of any Goods, the specification (if any) for such Goods referred to in the Purchase Order or otherwise agreed in writing by the parties.

“Uniform Commercial Code” means the Uniform Commercial Code as enacted in the state whose law applies to the transaction herein.

“Warranty Period” has the meaning set forth in Section 4.1.

1.2 Furthermore:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) by the “parties”, we mean you and us and a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) the masculine gender shall import the feminine and the singular shall import the plural and, in both cases, vice versa;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to or an obligation upon a party having done or omitted to do some act or thing shall be deemed to include a reference to or an obligation upon a third party doing or omitted to do such act or thing on that party’s behalf; and
- (f) a reference to writing or written includes faxes.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in or referred to in your quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Conditions or any of them shall be effective unless made in writing and signed by one of our duly authorized representatives.

2.3 Where the Purchase Order is for more than one item, the Contract shall (following your acceptance) be regarded as a single contract for all Goods to be supplied pursuant to that Purchase Order.

2.4

The Contract is composed of:

- (a) the Purchase Order;
- (b) these Conditions;
- (c) the Specification;
- (d) any other documents incorporated by reference in the Purchase Order or these Conditions; and
- (e) your acceptance of the Purchase Order in writing or by performance in accordance with condition 3.3.

For the purposes of interpretation, the constituent parts of the Contract shall rank in the order above, with the Purchase Order being of the highest rank, these Conditions being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the Contract, those of the higher ranking part shall prevail over those of the lower ranking part.

3. EFFECT OF PURCHASE ORDER

3.1

We shall only be bound by an order if it is issued on our standard Purchase Order form and signed by one of our duly authorized representatives.

3.2

The Purchase Order constitutes an offer by us to purchase the Goods subject to these Conditions. Accordingly, your acceptance of the Purchase Order shall establish a contract for the sale and purchase of the Goods on these Conditions. Any counter-offer made by you to supply the Goods on other conditions shall only be validly accepted if such acceptance is in writing and signed by one of our duly authorized representatives.

3.3

By signing and returning the acknowledgement copy of the Purchase Order form or by commencing the work or delivering pursuant to the Purchase Order, you will be deemed to have accepted the Purchase Order on these Conditions.

4. SUPPLIER'S WARRANTIES

4.1

You warrant to us, during the period starting on the delivery date and ending on the earlier of the date falling eighteen (18) months thereafter and the date falling twelve (12) months from the date on which we deliver any goods into which we have incorporated the Goods to our customer (the “Warranty Period”), that:

- (a) you have the necessary power and legal capacity to perform your obligations under the Contract;
- (b) you have obtained and currently hold any export license, import license or any official authorization and have carried out all customs formalities necessary for the export of the Goods, and for its transport through any country prior to delivery to us, and the Goods may be properly imported into the United States or any other country;
- (c) you have the capacity and ability to transport or arrange for the transportation of the Goods as per the delivery described in clause 7.1 below;
- (d) the Goods are free and clear of all liens, claims, or any other encumbrances, and you are conveying good title to the Goods to us;
- (e) unless we have, before or at the same time as the Purchase Order, agreed in writing with you to additional conditions regarding preparation of or environmental requirements at the site at which the Goods are to be installed, the Goods are suitable to be installed and used at the premises at which we intend to install them and that there are no additional conditions regarding site preparation or environmental requirements;
- (f) the Goods will: be free from defects, including defects in design, material and workmanship; shall be new and of the highest quality; and shall conform with the Specification or, to the extent there is no Specification, with any description or sample provided or published by you;
- (g) the Goods will be merchantable and safe, fit and sufficient for the particular purposes intended by us, whether expressly or impliedly made known to you, which purposes you acknowledge are known to you;
- (h) the Goods will be adequately contained, packaged, marked and labeled;
- (i) the Goods do not, and are not claimed to, violate any patent, trademark or copyright; and

	(j)	the Goods shall be manufactured in accordance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements in the United States or any other country where the Goods will be sold or used.	6.2	We reserve the right to call for certificates or test certificates for the Goods at any stage of manufacture or assembly. Such certificates shall clearly state our order numbers and any item or equipment numbers.
4.2		You further warrant that the Goods will:	6.3	We also reserve the right to inspect the quantity at the delivery premises immediately after you have delivered the Goods to the delivery premises or as soon thereafter as is reasonably possible.
	(a)	be usable and durable for a reasonable period of time considering the use of the Goods;	6.4	At the inspection, we shall be entitled to apply any reasonable tests to the Goods as required to determine the quantity and/or quality of the Goods, including, <i>inter alia</i> , whether the Goods meet the Specifications.
	(b)	contain adequate instructions and warnings pertaining to any hazard arising from or associated with the use of the Goods; and	6.5	If, as a result of any inspection or test, we find that the Goods or any items comprised within them do not comply with the Contract, or are unlikely to comply with it on completion of manufacture, processing or performance, we may, notwithstanding payment, any prior inspection or test, custom or usage of trade, (1) inform you, and you shall take such steps as are necessary to ensure compliance at your expense, and/or (2) reject the Goods.
	(c)	not be unsafe or defective or result in a product failure or hazard.		
4.3		For the avoidance of doubt, any warranty above requiring the Goods to conform to the Specification or any description shall include a warranty that the Goods will be capable of any standard of performance included in the Specification or such description.		
4.4		Any failure of the Goods to comply with the warranties in clauses 4.1 and/or 4.2 shall be known as a "Defect". In the event that we notify you of a Defect prior to the end of the Warranty Period we shall, at our option and without prejudice to any other rights and remedies available to us under the Uniform Commercial Code and any other applicable statutes or law, be entitled:	7.	DELIVERY
	(a)	to dispose of the Goods as we see fit and demand a refund of the purchase price;	7.1	You shall deliver the Goods in accordance with the terms of the Purchase Order.
	(b)	except in the case of Goods which are raw materials, to compel you to repair the Goods to our reasonable satisfaction or to replace them with Goods which meet the conditions of the Contract, in either case within a reasonable timeframe (to be specified by us) of being requested to do so;	7.2	You shall deliver the requested quantity of Goods by the date specified in the Purchase Order or, if no such date is specified, within 28 (twenty eight) days of the date of the Purchase Order. Time and quantity is of the essence as to the delivery of the Goods under the Contract.
	(c)	to repair or replace the defective Goods with similar items and recover the total cost relating thereto from you; or	7.3	Premium shipping expenses and/or other related expenses necessary to meet delivery schedules shall be your sole responsibility, unless the delay or expense was solely the result of our negligence and you provide us with notice of any claim against us within ten (10) days after the occurrence of our alleged negligent action giving rise to such claim.
	(d)	to reject the defective Goods	7.4	You shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and we shall not be responsible returning any such packing materials.
4.5		The warranties in clause 4.1 shall apply to any replacement, substitute or remedial equipment provided by you. In the event that you repair the Goods, the Warranty Period shall be renewed from the date on which we confirm in writing that the Goods have been repaired satisfactorily or, in the absence of such confirmation, the date on which the repairs are completed.	8.	RISK AND PROPERTY
4.6		Our rights under the Contract are in addition to all other rights we may have under the Uniform Commercial Code and any other applicable statutes or law, or any terms implied in our favor by law.	8.1	The Goods shall be at your risk until delivered to us at the place of delivery specified in the Contract or in the Purchase Order. You shall off-load the Goods from any mode of transport upon which they are conveyed to the place of delivery at your own risk.
4.7		The provisions in this condition 4 shall survive any delivery, inspection, test, acceptance, use, payment or performance pursuant to the Contract, shall extend to any replacement, repaired, substitute or remedial equipment provided by you, and shall inure to our benefit and to the benefit of our successors, assigns, customers, and the users of our goods and services. These warranties may not be limited or disclaimed.	8.2	Ownership of the Goods shall pass to us on completion of delivery (including off-loading) in accordance with the Contract, except that if the Goods are paid for before delivery, ownership shall pass to us once payment has been made. The passing of ownership in the Goods is without prejudice to any right of rejection to which we may be entitled under the Contract or otherwise.
4.8		You waive any claim against us and our customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against you or us for breach of warranty infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by us.	9.	PRICES
5.	QUANTITIES		9.1	All prices shall be as stated in the Purchase Order and shall, unless otherwise stated by us in writing, be deemed to be inclusive of all costs and expenses incurred by you in connection with the Contract including the costs of labor, materials, intellectual property licenses, packaging and shipping.
		Unless we agree otherwise in writing, you will deliver the exact specified quantities of items comprised in the Goods in accordance with the Purchase Order. Without affecting our other rights and remedies, we reserve the right to reject incomplete deliveries and to return excess quantities at your risk and expense.	9.2	Unless the Purchase Order states otherwise, the price is deemed to be inclusive of all applicable sales taxes.
			9.3	All prices are fixed and inclusive of delivery, packaging, packing, shipping, insurance and any other charges, dues or taxes, and are not subject to increase except as specifically provided in these Conditions or the Purchase Order.
6.	INSPECTION AND TESTING OF GOODS		10.	TAXES
6.1		You will:	10.1	Unless prohibited by law or the Purchase Order specifies otherwise, you shall pay all federal, state or local tax, transportation tax, or other tax, including but not limited to customs duties and tariffs, which is required to be imposed upon the Goods ordered, or by reason of their sale or delivery. All Purchase Order prices shall be deemed to have included all such taxes.
	(a)	carefully test and inspect the Goods before delivery to ensure that they comply with the requirements of the Contract; and	11.	PAYMENT & INVOICES
	(b)	if we request that you do so, give us reasonable advance notice of such tests (which we shall be entitled to attend).	11.1	You may invoice us in respect of any Purchase Order at the end of the month in which the Goods are delivered. Unless otherwise stated in the Purchase Order and subject to condition 11.2 below, we will pay your invoices within thirty (30) days of receiving them.

- 11.2 In addition to any right of setoff or recoupment allowed by law, we reserve the right to set off any amount at any time owing to us by you, under this or any other Contract, against any amount payable by us to you under the Contract.
- 12. DOCUMENTATION**
- 12.1 Packing slips (which shall accompany the Goods), shipping documents and memos, ASNs, SID, and bills of lading shall be mailed and/or sent electronically on the shipment date, and must show the Purchase Order number, vendor, and item and reference numbers. Value of the Goods shall not be declared on shipments F.O.B. point of origin. For each international shipment, you shall include a customs valuation invoice (using the value set forth in the Purchase Order), with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to us. You shall furnish (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and Goods provided and the value added in each country; (iii) all NAFTA, AALA and other related documents; (iv) all required export licenses or authorizations; and (v) any other documents requested by us or any of our customers. You warrant that the contents of such documents shall be true and accurate. You shall indemnify us for any damages, including but not limited to duties, interests and penalties, arising from a false or inaccurate statement.
- 13. INDEMNITY**
- 13.1 You hereby agree to indemnify, defend and hold us and our Group Companies, our employees, our officers, our directors, our agents and any of our customers or third party, harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation (collectively, "Liabilities") that are in any way related to:
- (a) any breach of the warranties under this Contract;
 - (b) any alleged or actual infringement of any third party's Intellectual Property rights or other rights arising out of the use, manufacture or supply of the Goods; or
 - (c) Defects, unsafe Goods, product failure, or hazard in any Goods; and/or
 - (d) any claim made against us in respect of any liability, loss, damage, injury, cost or expense sustained by us, our employees, our officers, our directors, our agents or by any of our customers or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach (including breach of any express or implied warranty) or negligent performance or failure or delay in performance of the Goods by you howsoever arising,
- and you waive the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by this indemnity. This indemnification obligation shall be in addition to your warranty obligations, and shall survive the termination or expiration of the Contract and/or the Purchase Order.
- 13.2 Within a reasonable time of becoming aware of any actual or potential Liabilities, we shall notify you. You, at our option and at your expense, will undertake defense of such actual or potential Liabilities through counsel approved by us. Provided, however, that you shall first obtain authorization from us before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect us, including any terms which admit the existence of a defect in the Goods or our failure to fully and faithfully perform our obligations. In the alternative, we may elect to undertake defense of such Liabilities to the extent they are asserted against us, and you shall reimburse us on a monthly basis for all expenses, attorney fees, and other costs incurred by us.
- 14. INSURANCE**
- 14.1 You shall maintain insurance in amounts acceptable to us, naming us as an additional insured, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, automobile liability insurance, Worker's Compensation, and employer's liability insurance as will adequately protect us against such damages, liabilities, claims, losses and expenses (including attorney's fees). You agree to submit certificates of insurance, evidencing its insurance coverage when requested by us.
- 15. CONFIDENTIALITY, PROPERTY AND INTELLECTUAL PROPERTY RIGHTS, PROTECTION OF PERSONAL INFORMATION**
- 15.1 You shall keep in strict confidence, and not use to your benefit or that of any third party (except to perform your/their obligations to us), all technical or commercial know-how, specifications (including the Specification), inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us or our agents, and any other confidential information concerning our business or products (or that/those of our Group Companies) which you may obtain pursuant to or in connection with the Contract. You shall restrict disclosure of such confidential materials to such of your officers, directors, employees, consultants and suppliers as need to know the same for the purpose of discharging your obligations to us and shall ensure that such persons are, prior to disclosure, made aware of the confidential nature of such confidential materials and are subject to obligations of confidentiality in respect of same which are at least as restrictive as those under these Conditions. You shall be liable to us for the acts and omissions of such persons in respect of such confidential materials as if they were your own acts and omissions.
- 15.2 All Materials which we or our Group Companies provide to you in tangible form shall at all times be and remain our exclusive property or that of any third party from whom we obtained them. You shall hold them in safe custody at your own risk and you shall maintain them and keep them in good condition until you return them to us. You shall not dispose of them or use them except in accordance with our written instructions or authorization. You shall return them and all copies of them to us immediately upon our first written request. In this clause an obligation to do or not to do something shall be interpreted as including an obligation to ensure that same is done or not done (as the case may be) by your officers, directors, employees, consultants and suppliers.
- 15.3 We shall own the Intellectual Property in all Materials which we or any of our Group Companies supply to you except to the extent that such Intellectual Property are owned by any third party from whom we license their use. We hereby grant you a non-exclusive, royalty free, revocable license to use such Intellectual Property in order to fulfil your obligations to us under the Contract. Such license shall only be sub-licensable to your suppliers if it is necessary for them to have such rights to enable you to fulfil your obligations to us under the Contract. Except where the Contract expressly states otherwise, no other license is granted to you in respect of such Intellectual Property.
- 15.4 The Intellectual Property in any Materials created or supplied by you, or any of your employees, under or in connection with the Contract or the Purchase Order and which exclusively relate to the Goods or the Contract shall vest in us. You agree that all works of authorship created by you in connection with the Contract or Purchase Order are "works made for hire" on our behalf as that term is used in connection with the U.S. Copyright Act. You shall retain the Intellectual Property in any Materials created or supplied by you, or any of your employees, under or in connection with the Contract and which do not exclusively relate to the Goods or the Contract but you shall ensure that we, our Group Companies and customers are granted, and you hereby grant us, our Group Companies and customers, a non-exclusive, worldwide, irrevocable, royalty-free license to use such Intellectual Property in connection with our respective businesses.
- 15.5 Any patents and rights to apply for any patent in respect of any invention, design, improvement, method or process created, invented or conceived of in connection with the manufacture and/or supply of the Goods shall vest in us.
- 15.6 We shall own any castings, patterns and moldings for which you charge us the costs of making or which may be created or used by you in the manufacture of any Goods exclusively to a design or specification provided by us. You shall ensure that such items are transferred into our possession upon request.
- 15.7 You shall do, and shall procure that your officers, directors, employees, consultants and suppliers do, (upon request) all acts and things which are necessary or desirable for us to enjoy the full benefit of the rights granted to us, or to be granted to us, under this condition 15.
- 15.8 You expressly warrant that all Goods will not and do not infringe any patent, trademark, copyright or other Intellectual Property of any third party. You (i) agree to defend, hold harmless and indemnify us

- and our customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Goods, including infringement arising out of compliance with specifications furnished by us or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from your actions; and (ii) waive any claim against us and our customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against you or us for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by us.
- 15.9** This condition 15 shall survive the termination of the Contract, however arising.
- 16. CANCELLATION AND DEFAULT**
- 16.1** We may cancel the Contract (for all or part only of the Goods) by giving written notice to you at any time before delivery, in which case our only liability to you shall be to pay you the costs of any materials and labor incurred by you for the cancelled Goods prior to cancellation.
- 16.2** You will be in default if any of the following occurs:
- (a) you are in breach of the Contract or of any other contract that we may have with you and, in the case of a breach capable of remedy, you fail to remedy same to our reasonable satisfaction within seven (7) days of being requested to do so;
 - (b) you fail to provide adequate assurances of future performance;
 - (c) you fail to deliver the Goods by the delivery date specified in this Contract;
 - (d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business;
 - (e) you become insolvent, or suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or you admit your inability to pay your debts, or you are deemed by the law of any applicable jurisdiction to be unable to pay your debts;
 - (f) you are unable to promptly provide us with adequate and reasonable assurance of your financial capability to perform timely any of your obligations under any Purchase Order;
 - (g) you are adjudicated bankrupt;
 - (h) you voluntarily file or permit the filing of a bankruptcy petition;
 - (i) you make an assignment for the benefit of your creditors;
 - (j) a person becomes entitled to appoint a receiver over you or your assets or a receiver is appointed over you or your assets; or
 - (k) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in (d) to (j) above.
- 16.3** You shall reimburse us for all costs incurred by us in connection with any of the events mentioned in 16.2(a) to (k) above, including but not limited to, all attorneys' fees and other professional fees.
- 16.4** If you default, or we reasonably believe that you are about to default and we notify you accordingly, without limiting any other rights or remedies available to us, we may:
- (a) refuse to accept any further deliveries under the Contract;
 - (b) treat the Contract and any other contract we may have with you as having been repudiated by you and terminate the Contract and/or such other contracts immediately upon giving you notice;
 - (c) reject any Goods already delivered and return them to you at your risk and expense on the basis that a full refund for the Goods so returned shall be paid immediately by you;
 - (d) purchase replacement goods from another source and compel you to reimburse us for all costs and expenses reasonably incurred in doing so; and/or
 - (e) in any case, to claim such damages as we may sustain in connection with your default not otherwise covered by this condition.
- 16.5** Termination of the Contract, however arising, shall not affect or prejudice the rights of the parties at termination or the continuation of any provision expressly or implicitly stated to survive termination.
- 17. US C-TPAT (U.S. CUSTOMS SERVICE'S CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM).**
- 17.1** For your Goods to be imported in the United States, you shall accept, implement and comply with all applicable recommendations or requirements of the United States Customs Service's Customs Trade Partnership Against Terrorism initiative (http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/). At our or the Customs Service's request, you shall certify in writing your acceptance, implementation and compliance with the C-TPAT and any accompanying recommendation and guidelines. You shall indemnify and hold us harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to you not accepting, implementing or complying with C-TPAT.
- 18. FAIR LABOR STANDARDS**
- 18.1** You hereby agree to comply with all applicable requirements of Sections 6.7 and 12 of the Fair Labor Standards Act, 29 USC §§ 201 et seq. in the performance of work under any Purchase Order or Contract, and with all applicable regulations and orders issued under Section 14 thereof.
- 19. COMPLIANCE WITH LAWS, TOXIC SUBSTANCES, OSHA**
- 19.1** You shall comply with all applicable laws, rules, regulations, orders, conventions, or standards enacted by the United States of America that regulate the manufacture, labeling, transportation, licensing, approval or certification of Products or Services, including but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, and each Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, Purchase Orders, rules, regulations and ordinances. Among other things, you agree to comply with the Occupational Safety & Health Act, 29 U.S.C. §§651 et seq. and the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.
- 19.2** All purchased materials used in manufacture of the Goods shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale.
- 19.3** You further represent and warrant that neither you nor any of your subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in corrupt business practices, in the supply of the Goods under this Purchase Order or the Contract.
- 19.4** Prior to shipment, you will furnish applicable Material Safety Data Sheets as well as information on the safe use and hazards associated with use of the Goods. You must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time.
- 19.5** You shall indemnify and hold us harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with your non-compliance with the provisions of this Paragraph 21.
- 19.6** At our request, you shall certify in writing your compliance with the foregoing.
- 20. FORCE MAJEURE**
- We may defer the date of delivery or payment, or cancel the Contract or reduce the amount of Goods ordered, if we are prevented from or delayed in carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving our own workforce or that of any other party), failure of a utility service or transport or telecommunication network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule,

regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

21. LIMITATIONS ON LIABILITY

21.1 In no event shall we be liable to you for anticipated profits or for special, incidental or consequential damages. Without limiting the foregoing, the parties further agree that:

- (a) With respect to a claim arising out of or in connection with the termination of this agreement or any Purchase Order, your damages, if any, shall not exceed the obligation we would have had to you in the absence of termination; and
- (b) With respect to all other claims, your damages shall be limited to the lesser of: (i) the value of products purchased by us under the Purchase Order; or (ii) \$100,000.

22. WAIVER

22.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

22.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

23. RELATIONSHIP OF THE PARTIES

23.1 Both parties to this Contract are independent contracting parties and nothing in these Conditions shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

24. ASSIGNMENT

24.1 The Purchase Order and the Contract are issued to you in reliance upon your personal performance of the duties imposed. You agree not to, in whole or in part, assign the Purchase Order or the Contract, delegate or subcontract the performance of your duties, without our prior written consent.

24.2 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.

25. THIRD PARTY RIGHTS

Except as set forth in these Conditions, the Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else, except that our Group Companies may enforce it as if they were party to it.

26. NOTICES

Any notice which requires to be given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address specified in the Purchase Order, its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the appropriate address; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the fifth Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27. ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES

You shall comply with any method of electronic communication specified by us, including requirements for electronic funds transfer, Purchase Order transmission, electronic signature, and communication.

28. REMEDIES

28.1 The rights and remedies reserved to us in each Purchase Order shall be cumulative with, and additional to, all other or further remedies provided in law or equity.

28.2 You acknowledge and agree that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Purchase Order by you with respect to its delivery of the Goods to us and that, in addition to all other rights and remedies which we may have, we shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable

~~28.3~~

Notwithstanding anything to the contrary contained in any Purchase Order, we do not release any claim against you that is based in whole or in part on any fraud or duress in connection with the Purchase Order or any breach or anticipatory breach of the Purchase Order or any other Purchase Order between you and us (even if that Purchase Order relates to other products).

29. SEVERABILITY

If any term(s) of the Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Purchase Order shall remain in full force and effect.

30. GOVERNING LAW AND JURISDICTION

The construction, interpretation and performance of this Purchase Order and all transactions thereunder shall be governed by the laws of the U.S. State in which we have our place of business (as stated on the Purchase Order), without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. You consent to the exclusive jurisdiction of the state and federal courts located in the city and county in which we have our place of business (as stated in the Purchase Order), and waive any right to which they might be entitled to submit any dispute to the courts of another jurisdiction, for any legal or equitable action or proceeding arising out of, or in connection with, each Purchase Order. You specifically waive any and all objections to venue in such courts.

Document control

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