



## PURCHASE ORDER TERMS FOR GOODS AND SERVICES (U.S.A. version)

### Applicability of Terms

- (a) These terms and conditions apply to any Order for Goods or Services from Customer to Supplier, unless the parties have expressly agreed in a separate written agreement signed by both parties that different terms shall apply.
- (b) Supplier may accept an Order from Customer in writing or by delivering or performing all or part of the Goods and/or Services the Order specifies. Supplier need not countersign an Order or sign or initial these terms and conditions to accept an Order from Customer.
- (c) Supplier's acceptance of an Order is expressly limited to the Contract, without addition, modification, or deletion. Any additional, modified, deleted, or inconsistent terms or conditions proposed by Supplier in any quotation, acknowledgement, invoice, or other document are expressly rejected, shall have no force or effect, and shall not form part of the Contract, unless expressly agreed in writing by an authorized representative of Customer. In particular, the general terms and conditions of Supplier shall not apply, irrespective of whether or not they are expressly rejected by Customer. Only these terms and conditions shall apply, even if Customer, in the awareness of other general terms and conditions, performs or accepts performance by Supplier without reservations.
- (d) In the event of any conflict or inconsistency between these terms and conditions and any other agreement or document, these terms and conditions shall prevail, unless the parties have expressly agreed otherwise in a separate written agreement signed by authorized representatives of both parties.

### Definitions

Capitalized words and expressions have the following meanings when interpreting the Contract:

**Affiliate:** any company or entity directly or indirectly controlling or controlled by or under direct or indirect common control with any of the parties or its ultimate parent company. Control for the purpose of this definition means direct or indirect ownership or control of (i) at least fifty percent (50%) of the voting rights, (ii) at least fifty percent (50%) of the registered capital of said entity, or (iii) possession of the power to direct or cause the direction of a company's or entity's management and policies, including through contract.

**Anti-Bribery Laws:** is as defined at sub-clause 17.3(a)(i).

**Applicable Data Protection Laws:** all laws, rules, regulations, governmental requirements, codes as well as international, federal, state, provincial laws applicable to Customer and/or Supplier when acting as a controller or processor of Personal Data, as amended and replaced from time to time.

**Applicable Law:** all applicable foreign, federal, state, municipal, or other local laws, statutes, rules, governmental requirements, and regulations from time to time in force and any rules, and orders issued by authorities; regulatory approvals, permits, licenses, and authorizations.

**Confidential Information:** means any information, documents and materials disclosed by Customer Group and/or its Representatives that: (i) if disclosed in writing or other tangible form, is marked "confidential" or "proprietary" at the time of such disclosure; (ii) if disclosed orally or by visual presentation, is either identified as

"confidential" or "proprietary" at the time of such disclosure; or (iii) due to its nature or the circumstances of its disclosure, a person exercising reasonable business judgment would understand it to be confidential or proprietary. Confidential Information shall include, but is not limited to, the terms, negotiations, and existence of the Contract, any Work Product and any inventions, research, experimental work, concepts, know-how, techniques, processes, designs, technical samples, prototypes, specifications, drawings, software source documents, trade secrets, financial information, business plans, sales plans, marketing plans, products, services, product or service development plans, business forecasts, procurement requirements, customer information, financial or commercial information and any other proprietary or confidential information, and any improvements thereto.

**Contract:** these terms and conditions together with any Order.

**Contract Price:** the amount payable by Customer to Supplier in accordance with the Contract.

**Customer:** the United States of America registered entity that is a member of the Klöckner Pentaplast group of companies and described as Customer in the Order.

**Customer Data:** any data, information, or content, including Personal Data, that is provided by, or on behalf of, Customer Group or that is accessed, collected, generated, or processed by Supplier in connection with the performance of the Contract. Customer Data includes any data, information, or content derived from or based on the foregoing.



**Customer Group:** Customer and its Affiliates. A reference to Customer Group includes a reference to each member severally.

**Force Majeure Event:** is as defined at clause 22.2.

**Goods:** goods, materials, products, and equipment to be supplied by Supplier under the Contract.

**IP Rights:** all patents, copyright (including in computer software), database rights, design rights, rights in Confidential Information, including know-how and trade secrets, inventions, moral rights, trademarks and service marks and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Licensed Software:** means the object code version of the software more particularly described as such in the Contract, all permitted reproductions of that software (whether made by Customer or by a member of Customer Group) and all associated user documentation, together with all new versions, releases and other upgrades provided by Supplier to Customer from time to time.

**OFAC:** means the Office of Foreign Assets Control being a department of the U.S. Treasury that administers and enforces economic and trade sanctions.

**Order:** a written purchase order or work statement for Goods and/or Services from Customer to Supplier.

**Personal Data:** any information relating to an identified or identifiable individual, unless otherwise defined under Applicable Data Protection Laws.

**Raw Materials:** means Goods to be used in the manufacture of Customer's end products.

**Relevant Change:** is as defined at clause 4.6.

**Representatives:** means in relation to a party, its Affiliates and its and their directors, officers, managers, employees, members, stockholders, partners, principals, agents and other representatives (including financial advisors, consultants, attorneys and accountants advising any of the foregoing parties) who have a need to access the Confidential Information in order to fulfill the Contract and who are bound to at least the same obligations of confidentiality as set forth herein.

**Restricted Jurisdiction:** countries or states that are subject to comprehensive economic or trade sanctions, restrictions, or embargoes (which the relevant authorities may amend from time to time).

**Restricted Party:** means (i) any entity or person (a) that is resident, established, incorporated, or registered in a Restricted Jurisdiction; or (b) that has been or is designated

on any sanctions or export related list of restricted or blocked persons, including designation on the EU Consolidated Financial Sanctions List, the UK Sanctions List, the OFAC List of Specially Designated Nationals and Blocked Persons, the OFAC Sectoral Sanctions Identifications List, or Commerce's Entity List; or (c) that is otherwise subject to blocking sanctions under Trade Control Laws; and (ii) any Affiliates or person acting on behalf of any of the foregoing.

**Scope:** the Goods to be delivered and/or the Services to be performed, as the case may be, by or on behalf of Supplier under the Contract.

**Service Levels:** means any key performance indicators or other service standards set out in the Contract.

**Services:** services to be supplied by Supplier under the Contract including, where applicable the provision of Licensed Software.

**Specification:** any specification for Goods and/or Services agreed in writing between Supplier and Customer.

**Supplier:** the entity described as such in the Contract.

**Supplier Group:** Supplier and: (a) its subcontractors, (b) any Affiliate of Supplier or its sub-contractors; and (c) any director, officer, employee or agency personnel of the foregoing. A reference to Supplier Group includes a reference to each member severally.

**Supplier Personnel:** any individual provided by Supplier Group, whether directly or indirectly, and assigned to work in connection with the performance of Scope, whether or not an employee of Supplier Group.

**Supplier Principles:** are defined at clause 17.2(a).

**Taxes:** all taxes, duties, levies, import, export, customs, stamp or excise duties (including clearing and brokerage charges), charges, surcharges, withholdings, deductions, or contributions that are imposed or assessed by any competent authority of the country where Scope is performed or any other country in accordance with Applicable Law.

**Trade Control Laws:** all Applicable Laws concerning trade or economic sanctions or embargoes, Restricted Party lists, trade controls on the import, export, re-export, transfer or otherwise trade of goods, services, software, or technology, including those of the European Union, the United Kingdom and the United States of America and other anti-money laundering laws and regulations.

**Work Product:** any and all information, reports, data, drawings, designs, computer programs, source and object codes, program documentation, presentations, analyses, results, solutions, calculations, studies, concepts, codes, manuals, inventions, business models, spread sheets, prototypes, recommendations, specifications or other information, documents, or materials, which arise out of or are made or generated for Customer, as a part of Scope, or



which are made, created, or generated from or using Customer Group's Confidential Information or Customer Group's IP Rights.

## **1 General Requirements**

- 1.1 The Contract is non-exclusive and carries no requirement for Customer to place Orders or purchase minimum quantities of Goods or Services. Customer may acquire same or similar Scope from other suppliers.
- 1.2 Supplier shall meet any dates for performance of Scope specified in the Contract. Time is of the essence for the performance of Scope.

## **2 Goods Warranties**

- 2.1 Supplier warrants good and clear title to the Goods and warrants that the Goods will: (i) be without fault, defect, or deficiency; (ii) be fit for use for any purpose specified in the Contract or otherwise notified to the Supplier by the Customer; (iii) be in strict conformance with the Contract and any Specification or other description supplied by Customer to Supplier and agreed to as part of the Contract; (iv) be free of chemicals and substances prohibited, restricted or limited by any Applicable Law, (v) not infringe the IP Rights of any person (vi) comply with all Applicable Laws regarding the manufacture and supply of the Goods including, but not limited to, laws and regulations relating to food contact substances promulgated in the US by the FDA and in the EU by the European Commission and the European Food Safety Authority, as applicable, (vii) where the Goods are Raw Materials, meet the requirements of Regulation (EC) No 1907/2006 of the European Parliament and Council dated 18 December 2006 (as the same may be updated from time to time) regarding chemicals (REACH); and (viii) in the case of recycling materials (Flakes, Regranulat) meet the requirements of the Regulation (EC) No 282/2008 of the European Commission dated 27 March 2008 (as the same may be updated from time to time).
- 2.2 Supplier warrants that the Specification is complete and accurate in all respects and that no changes shall be made to the Specification without the prior written consent of Customer.
- 2.3 Unless a different period is specified in the Scope description, the warranties at clause 2.1 above shall last for a period 36 months from the date of delivery.

## **3 Title and Risk in Goods**

- 3.1 Supplier retains the risk of loss of and damage to the Goods until delivery is complete in accordance with the agreed Incoterm (2020) in any case where

Incoterms are specified, otherwise when Customer takes physical possession of the Goods.

- 3.2 Title to the Goods will pass to Customer at the earlier of: (i) risk of loss of and damage to the Goods passing to Customer in accordance with clause 3.1 above; and (ii) when Customer makes payment for the Goods.
- 3.3 Supplier will pack the Goods so that they may be transported and unloaded safely. Supplier represents that, on delivery, the Goods will be accurately described, classified, marked, and labelled, in accordance with the Contract and Applicable Laws.

## **4 Security of Supply for Raw Materials**

- 4.1 This clause 4 applies where Supplier is supplying Raw Materials.
- 4.2 Supplier shall notify Customer in writing, at least 12 (twelve) months in advance, (or if later, immediately upon obtaining knowledge), of the discontinuation of production of Raw Materials.
- 4.3 In this event, Customer shall have a pre-emptive right, until the suspension of production, to acquire under the terms of the Contract, all or a lesser volume of all Raw Materials, including Raw Materials that have already been manufactured for Customer, are stored by Customer under a consignment stock agreement between the parties, or are still to be manufactured.
- 4.4 Supplier warrants that at the date of entering into the Contract it is not intending to make a Relevant Change in connection with the Raw Materials.
- 4.5 Supplier shall give Customer written notice of any Relevant Change and such notice shall be given not less than 24 months in advance where Raw Materials are supplied for use for pharma or medical applications and not less than 12 months in advance in all other cases or where the duration of the Contract is less than 24 months. Supplier may not make a Relevant Change without first obtaining the consent in writing of Customer in accordance with this clause and undertakes that unless and until such consent is given by Customer that it will continue to supply and will ensure that it has the capacity to supply, the Raw Materials in their unchanged form in the amounts contemplated by the Contract for the entire term of the Contract. Without prejudice to its right to recover damages, Customer may terminate the Contract by giving not less than one month's notice in writing to Supplier if Supplier makes a Relevant Change without seeking Customer's consent or is unable or refuses to supply Raw Materials to Customer in their unchanged form for the remaining term of the Contract.



- 4.6 For the purposes of this clause “Relevant Change” means a change in all or any of the means of production, production facility(ies), production procedures, or in the composition, origin, or selection of Raw Materials or product specifications or quality control methods.

#### **5 Business Continuity / Quality Assurance**

- 5.1 Supplier shall maintain a Business Continuity Plan (“BCP”) which addresses amongst other things: plans, procedures, communications, alternative sources of materials and staffing in the event of unplanned events which affect the ability of Supplier to perform the Contract. Supplier shall ensure that all its staff are knowledgeable of the BCP and able to access it.
- 5.2 Supplier must have in place a quality assurance program (i) that complies with the best practice in its industry, and (ii) in which statistical process control systems in key processes and measurements are agreed with Customer.

#### **6 Services Warranties**

- 6.1 Supplier warrants that all Services supplied in connection with the performance of Scope will be:
- (a) performed in accordance with the Contract and any Specification;
  - (b) fit for use for any purpose specified in the Contract and any Specification;
  - (c) performed in accordance with all Applicable Laws;
  - (d) performed in a way which does not damage (in Customer’s reasonable opinion) the names and reputations of Customer Group;
  - (e) performed using such reasonable skill and care that it is usual to expect from a leading supplier of services similar to the Services; and
  - (f) performed using Supplier Personnel who are well trained, experienced, properly qualified and courteous at all times.
- 6.2 Supplier will supply Services diligently, efficiently, and carefully, in a good and professional manner, and in accordance with the Contract. Supplier will furnish all skills, labor, supervision, equipment, goods, materials, supplies, transport, and storage required for Services.
- 6.3 Where required by Customer, Supplier will perform at its own expense security background checks and obtain entry credentials for Supplier Personnel on Customer Group worksites.
- 6.4 Supplier warrants and represents that, in providing the Services, it shall meet or exceed any Service Levels.
- 6.5 Supplier shall ensure that when on the premises of any Customer Group member, each member of the

Supplier Personnel shall observe the health and safety and security rules which are notified by Customer to the Supplier from time to time.

#### **7 Terms specific to the supply of Licensed Software**

- 7.1 The terms of this clause 7 shall apply if Supplier is licensing Licensed Software to Customer under the Contract.
- 7.2 Supplier hereby grants to Customer a perpetual, non-transferable, (except as expressly permitted under the Contract), irrevocable and non-exclusive license (the “License”) to:
- (a) use the Licensed Software and make such copies thereof as may be necessary for its business, security, back-up and archival purposes;
  - (b) use the Licensed Software on any hardware platform and in combination with other software;
  - (c) print copies of any user documentation supplied for use in association with the Licensed Software for its own internal use, in which event all proprietary notices on such user documentation shall be reproduced; and
  - (d) permit Customer Group, agents, consultants and/or contractors to exercise all of the rights granted to Customer under the License;
- 7.3 Neither Customer nor any member of Customer Group shall modify, copy, adapt, reverse engineer, decompile, disassemble or modify the Licensed Software (either in whole or in part) except as permitted by law or under the Contract.
- 7.4 The License entitles Customer to:
- (a) receive new releases as soon as they are released, free of charge;
  - (b) receive new versions of the Licensed Software and associated user documentation as soon as they are released, free of charge; and
  - (c) receive information in relation to new products which may be of interest or use to Customer; it being agreed, however, that Customer shall at no time be obliged to adopt, implement or use any new release or new version or to purchase any new product.
- 7.5 Supplier undertakes that it shall take all reasonable measures (including for example, adopting the latest virus protection and firewalls, intrusion detection systems, and performing vulnerability scans) to protect against the introduction of any virus or other malicious code to the Customer’s IT systems or data.
- 7.6 Nothing in the Contract shall prejudice any condition or warranty, express or implied, or any legal remedy to which Customer may be entitled in relation to the



Contract by virtue of any statute, custom, general law, local law or regulation.

## **8 Payment and Invoicing**

- 8.1 Customer agrees to pay the Contract Price to Supplier in the currency specified in the Contract, and within the timescales specified in this clause. The Contract Price is all-inclusive except for value added tax or sales tax.
- 8.2 Supplier will invoice following delivery of the Goods or completion of the Services or as otherwise provided in the Contract.
- 8.3 Unless (i) otherwise stated in the Contract or (ii) shorter payment terms are required by Applicable Law, Customer will pay Supplier any undisputed amount within 60 days from the end of month in which a correct and adequately supported invoice is received plus 5 working days.
- 8.4 In the event Applicable Law requires or permits the parties to identify an interest rate applicable to late payments due by Customer, such rate shall be the lowest applicable interest rate permitted by Applicable Law, which may include zero percent (0%).
- 8.5 Payment of an invoice: (i) is not evidence that the Scope was performed in accordance with the Contract, and (ii) does not limit Customer's rights or remedies under the Contract or Applicable Law.
- 8.6 If Customer disputes an invoice, Customer may withhold payment of any disputed part of an invoice and pay only the undisputed part.
- 8.7 Customer may, on notice to Supplier, set off any liabilities between Supplier and Customer arising out of the Contract or any other agreement.
- 8.8 Any exercise by Customer of its rights under this clause 8 (Payment and Invoicing) will be without prejudice to any other rights or remedies available to Customer.

## **9 Variations**

- 9.1 Customer may request, or Supplier may initiate, a variation to the Scope for reasons of emergency, safety, or other reasonable necessity. Supplier is not entitled to a variation for matters that were included in Scope, or that Supplier agreed to perform or take into account in connection with the Contract.

## **10 Inspections and Testing of Scope**

- 10.1 To confirm Scope complies with the Contract, Supplier will, at Customer's request, perform all tests and inspections required by the Contract and Applicable Law.
- 10.2 If, following an inspection or testing, Customer considers that the Goods or Work Product do not conform or are unlikely to comply with Supplier's

undertakings at clause 2, Customer shall inform Supplier and Supplier shall promptly take such remedial action as is necessary to ensure compliance. Customer may require further inspections and tests after Supplier has carried out its remedial actions.

- 10.3 Upon completion of Supplier's remedial action, Customer shall have a further reasonable period to re-inspect and re-test the Scope. If Customer determines that the Scope now conform to the requirements of the Contract, Customer shall provide Supplier with written notice of acceptance of the Scope.

- 10.4 Acceptance of the Scope by Customer pursuant to clause 10.3 shall not: (i) affect Customer's rights under the warranties in clause 2; or (ii) prejudice Customer's rights and remedies under clause 11 (Remedial Actions) or any other provision of the Contract.

## **11 Remedial Actions**

- 11.1 If the Scope is not delivered on the applicable date(s) or does not comply with the warranties set out in the Contract, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Scope, Customer may do any one or more of the following:

- (a) terminate the Contract;
- (b) reject the Scope (in whole or in part) and return any Goods, Work Product or Service deliverables to Supplier at Supplier's own risk and expense;
- (c) require Supplier to repair or replace the rejected Goods or reperform the rejected Services, or to provide a full refund of the price of the rejected Scope (if paid) including any sums paid in advance for Scope that Supplier has not provided;
- (d) refuse to accept any subsequent delivery of Scope from Supplier;
- (e) recover from Supplier any costs incurred by Customer in obtaining substitute Goods and/or Services from a third party; and
- (f) claim damages for any other costs, loss or expenses incurred by Customer which are in any way attributable to Supplier's failure to carry out its obligations under the Contract.

- 11.2 Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **12 Termination**

- 12.1 Customer may terminate the Contract with immediate effect by giving written notice to Supplier if Supplier commits a material breach of any term of the Contract and (if such breach is remediable) fails





to remedy that breach within a period of 30 days after being notified in writing to do so. In addition, by exception, any breach of clause 17 (Compliance) will specifically allow Customer to proceed with immediate termination.

- 12.2 Customer may terminate the Contract by giving Supplier written notice if Supplier: (i) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or is unable to pay its debts as they fall due; (ii) ceases or threatens to cease to carry on all or a substantial part of its business; (iii) begins negotiations for, starts proceedings concerning, or makes an agreement for the reorganisation, compromise, deferral, or general assignment of, all or substantially all of its debts; (iv) makes or proposes an arrangement for the benefit of some or all of its creditors of all or substantially all of its debts; (v) takes any step with a view to its administration, winding up, or bankruptcy; (vi) is subject to an event in which all or substantially all of its assets are subject to any steps taken to enforce security over those assets or to levy execution or similar process, including the appointment of a receiver, trustee in bankruptcy, or similar officer; or (vii) is subject to any event under the law of any relevant jurisdiction that has an analogous or equivalent effect to any of the events listed above.
- 12.3 Customer may terminate the Contract for convenience at any time without penalty by issuing Supplier with not less than (i) 30 days written notice to that effect where the Contract term is 12 months or less, (ii) 45 days written notice to that effect where the Contract term is more than 12 months and up to and including 2 years, and (iii) 60 days written notice to that effect where the Contract term is over 2 years.
- 12.4 Supplier may terminate the Contract for good cause by notice in writing if Customer fails to pay an undisputed amount to Supplier that is properly presented, due and payable for more than 60 days subject to:
- (a) Supplier giving Customer prior written notice specifying the unpaid amount which is due and payable for more than 60 days and requiring it to be paid within a further period of 45 days of such notice; and
  - (b) Customer failing to cure or provide proper grounds for non-payment during the notice period

### **13 Consequences of Termination**

- 13.1 On any termination, Supplier will promptly cease performance, give access to Scope in progress, and

take reasonable steps to allow Customer to complete Scope.

- 13.2 Termination of the Contract howsoever arising shall not affect any of the parties' rights and obligations that have accrued as at or before termination, including the right to claim damages in respect of any breach of the Contract.
- 13.3 The parties waive any right to terminate or rescind the Contract on grounds other than those set out in the Contract.
- 13.4 When the Contract ends, Supplier agrees to return to Customer all papers, documents and records (with any copies) which Supplier has that relate to the Scope or the Contract at no cost to Customer. Customer may ask Supplier to destroy that documentation rather than return it, in which case Supplier must do so promptly.
- 13.5 During any termination notice period and for a reasonable period afterwards, Supplier must help ensure the smooth handover of provision of any Services by giving any assistance that Customer reasonably requests, subject to Customer paying Supplier's reasonable costs incurred in doing so.
- 13.6 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after the Contract is brought to an end shall remain in full force and effect.

### **14 Liabilities and Indemnities**

- 14.1 To the fullest extent permitted by Applicable Laws, and without limiting any other rights or remedies to which Customer may be entitled, Supplier shall indemnify, defend, and hold harmless Customer from and against all claims, actions, suits, proceedings, judgments, liabilities, costs, expenses, damages and losses (including attorneys' fees and related legal costs and expenses) alleged against, or suffered or incurred by, Customer as a result of or in connection with:
- (a) any claim made against Customer by a third party for death, personal injury or damage to, or destruction of, property arising out of or in connection with supply of the Services or defects in Goods;
  - (b) any claim made against Customer by a third party arising out of or in connection with the supply of the Scope;
  - (c) any act, omission, negligence, recklessness, or wilful misconduct of Supplier or Supplier Personnel in the supply of the Scope; and
  - (d) any claim that the ownership, possession, or use of any Scope or Work Product violates, infringes,



contravenes, or misappropriates the IP Rights of a third party.

to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Supplier, Supplier Group and/or Supplier Personnel.

**14.2 TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, CUSTOMER'S TOTAL LIABILITY UNDER THE CONTRACT WILL BE THE AMOUNT SPECIFIED IN THE APPLICABLE ORDER, AND IN NO EVENT WILL CUSTOMER WILL BE LIABLE TO SUPPLIER FOR INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, CONSEQUENTIAL, OR OTHER ENHANCED DAMAGES OR LOSSES AND/OR LOSS OF PRODUCTION, LOSS OF PRODUCT, LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFIT, OR LOSS OF ANTICIPATED PROFIT, WHETHER ANY SUCH DAMAGE OR LOSS IS DIRECT, INDIRECT, OR CONSEQUENTIAL, WHETHER OR NOT THE LOSSES WERE FORESEEABLE AT THE TIME OF ENTERING INTO THE CONTRACT, WHETHER CUSTOMER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS, THE LEGAL OR EQUITABLE THEORY UPON WHICH THE LOSS OR DAMAGE IS BASED.**

14.3 This clause 14 (Liabilities and Indemnities) shall survive termination of the Contract.

#### **15 Insurance**

15.1 During the term of the Contract, Supplier shall, to the extent applicable, maintain with a reputable insurance company, professional indemnity insurance, product liability insurance, employers liability insurance and public liability insurance sufficient to cover the liabilities that may arise under or in connection with the Contract and as would be maintained by prudent companies in similar business and activities, as well as any insurance required by Applicable Law. Satisfaction of the obligation to procure insurance and perform other actions in connection with this clause 15 will not relieve Supplier of any other obligations or liability. Supplier agrees promptly to provide copies of its insurance policies to Customer on request.

15.2 In addition, where Supplier is supplying Raw Materials, Supplier shall maintain commercial general liability insurance (which shall include product liability insurance) in the sum of US\$5,000,000 (five million US Dollars) per occurrence and any other insurances required by Applicable Law.

#### **16 Taxes**

16.1 Supplier will be responsible for payment of all Taxes, and any interest, fines, or penalties for which Supplier Group is liable for in respect of: (i) income, capital gains, and wages; and (ii) import or export of Supplier equipment, or the movement of Supplier Personnel.

16.2 If indirect taxes (i.e., any of value added tax, goods and services tax, or sales tax or similar levy) apply, Supplier will add them to the invoice as a separate item, and Customer will pay them in addition to the Contract Price.

16.3 The Contract Price is deemed to be fully inclusive of all costs, including (but not limited to) taxes (except indirect taxes in accordance with clause 16.2 above), import or export duties, insurance, parts, labor costs, packing, handling, storing, and any expenses such as travel and food costs. Any expenses payable by Customer must be agreed in advance by Customer in writing.

16.4 Supplier shall not engage in any activity in their business with Customer which involves tax evasion or the facilitation of tax evasion. Customer has zero tolerance of tax evasion and expects those it works with to adopt the same approach, including maintaining appropriate prevention procedures.

#### **17 Compliance**

##### **17.1 Applicable Law**

(a) Supplier will comply with Applicable Law in the performance of the Contract and will promptly notify Customer of any material breaches.

##### **17.2 Business Principles**

(a) Supplier acknowledges it has familiarised itself with the following code and policy: [KP Supplier Code of Conduct](#) and [KP Sustainable Procurement Policy](#) (together "the **Supplier Principles**").

(b) Supplier agrees that Supplier and its Affiliates will adhere to the principles contained in the Supplier Principles (or where Supplier has equivalent principles, to those equivalent principles) in all its dealings with or on behalf of Customer in connection with the Contract and related matters.

(c) Supplier grants Customer and its Representatives the right, on reasonable notice and during normal business hours, to audit Supplier's relevant books, accounts, documents and records (in electronic format or otherwise) and, where reasonably required, to conduct physical inspections of Supplier's worksites and premises in order for Customer to monitor Supplier's performance under, and compliance with, the Contract and the Supplier Principles. This right will exist during the



term of the Contract and for one year after its expiry or termination. Supplier agrees to co-operate with the audit and, where requested, provide access to its Supplier Personnel, systems, premises and relevant documentation.

#### 17.3 Anti-Bribery and Corruption

- (a) Supplier represents:
- (i) that it is familiar with and understands the prohibitions of the applicable national state and foreign laws and regulations related to anti-bribery and anti-corruption including the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, as amended, and all other applicable laws that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of or the providing of unlawful gratuities, facilitation payments or other benefits to any government official or other person (the “**Anti-Bribery Laws**”);
  - (ii) that it has not engaged, caused or permitted and will not engage, cause or permit any of its Affiliates, shareholders, directors, officers, employees, or agents to engage in any act that would involve a violation of the Anti-Bribery Laws; and
  - (iii) that it will immediately notify Customer if it receives or acquires knowledge of, directly or indirectly, any request or action which it believes will or may be a violation of the Anti-Bribery Laws, or any other applicable anti-bribery law.

#### 17.4 Export and Trade Controls

- (a) Supplier will comply with all applicable Trade Control Laws and will provide Customer with necessary data to comply with Trade Control Laws.
- (b) Supplier will ensure that, except with the prior written consent of Customer:
- (i) Customer provided items are not exported, provided, or made available to any Restricted Jurisdiction or Restricted Parties;
  - (ii) Supplier Personnel with access to Customer Group’s technical information, information technology resources or Customer Group’s worksites, are not Restricted Parties or nationals of a Restricted Jurisdiction;
  - (iii) Supplier will not utilise subcontractors that are Restricted Parties; and

- (iv) Supplier will not source any of the Goods, software or technology in Scope to be supplied to Customer under the Contract, directly or indirectly from Restricted Parties or from a Restricted Jurisdiction.

#### 17.5 Decarbonisation

- (a) Customer is a supporter of the Science Based Targets initiative (SBTi) (<https://sciencebasedtargets.org/>), a partnership between Carbon Disclosure Project (CDP), the United Nations Global Compact, World Resources Institute (WRI) and the World Wide Fund for Nature (WWF) to drive climate action in the private sector by enabling organizations to set science-based emissions reduction targets. As part of this support, Customer evaluates the decarbonization performance of its Suppliers.
- (b) Supplier will, at its own expense:
- (i) measure, manage and report its GHG Emissions in accordance with the GHG protocol standards; and
  - (ii) in collaboration with Customer, work on reducing the GHG Emissions associated with performance of the Contract and identify appropriate strategies for the improvement of the product carbon footprint of the products/ services (as applicable) it will sell to Customer and the respective organisational carbon footprint of the Parties.

#### 18 **Personal Data Protection**

- 18.1 Where the parties are independent Data Controllers, the parties may provide each other with Personal Data in the course of the performance of the Contract, the processing and transfer of which will be done in accordance with Applicable Data Protection Laws and the Contract. Supplier may not use, sell, retain or disclose the Personal Data for any purpose other than the performance of the Scope or as required or permitted by Applicable Data Protection Laws. Each party is a Data Controller as defined in Applicable Data Protection Laws in respect of the Personal Data shared during the course of business dealings between the parties.
- 18.2 Where Supplier is acting as Data Processor for Customer in the provision of Services the parties will comply with the data processing terms set out in Appendix 1 hereto.

#### 19 **Confidential Information**

- 19.1 Supplier (a) shall keep the Confidential Information, whether received before, on or after the





commencement of the Contract, confidential; (b) shall not, except as specifically authorized in writing by Customer, or any member of Customer Group, communicate such Confidential Information to any third party or any of its Representatives, unless such Representative reasonably requires access thereto for effective performance of the Contract and is bound by an obligation of confidentiality with respect to the Confidential Information not less stringent than the obligations of Supplier under the Contract; and (c) shall not use the Confidential Information (i) to compete directly or indirectly with Customer Group; (ii) for its own account or purpose; (iii) to interfere with any actual and/or proposed business of Customer Group; or (iv) for any purpose other than the performance of the Contract.

19.2 Notwithstanding anything to the contrary in the Contract, Supplier may disclose the Confidential Information disclosed by Customer Group to its Representatives on a need to know basis and only to the extent necessary to allow such Representative to assist Supplier in performing the Contract or to its Representatives consisting of Supplier's financial advisors, attorneys or other professional advisors. Supplier agrees to (i) inform its Representatives of the proprietary and confidential nature of the Confidential Information disclosed by Customer Group and the obligations hereof, (ii) cause its own Representatives to observe the terms and conditions hereof as if it were a party hereto and (iii) be responsible for any breach hereof by its own Representatives.

19.3 The obligations imposed by the Contract do not apply to the following:

- (a) Confidential Information, which, at the time of disclosure, was generally available to the public or thereafter became generally available to the public by publication or otherwise, other than by breach of the Contract;
- (b) Confidential Information which was in the possession of Supplier or its Representatives at the time of its disclosure and was not acquired, either directly or indirectly, from Customer Group or its Representatives;
- (c) Confidential Information which is independently and lawfully made available as a matter of right by a third party and which did not originate from Customer Group or its Representatives;
- (d) Confidential Information which is independently developed by Supplier or its Representatives without the benefit of information disclosed to it by

Customer Group or its Representatives pursuant to the Contract;

- (e) Confidential Information which is disclosed pursuant to a proper court or governmental order provided that Supplier gave Customer Group reasonable advance notice of its intended disclosure pursuant to such order; and
- (f) Confidential Information which is approved for release though prior written consent of Customer Group.

## **20 Information Security**

20.1 Where the provision of Services involves Supplier either (i) accessing Customer's I.T systems or networks or (ii) storing any Customer Data, Supplier shall ensure it has in place appropriate technical and organisational measures to protect such systems and Customer Data in line with best industry practice. This shall include, but not be limited to:

- (a) implementing and maintaining appropriate access controls, authentication mechanisms, and user management processes to prevent unauthorised access to Customer Data and/or Customer's IT systems;
- (b) deploying robust endpoint protection, network security, and logging/monitoring capabilities to detect and respond to security incidents;
- (c) maintaining appropriate data backup and disaster recovery procedures to ensure the availability and integrity of Customer Data;
- (d) providing regular security awareness training to Supplier Personnel with access to Customer systems or Customer Data; and
- (e) complying with any specific information security requirements or policies provided by Customer.

20.2 Supplier shall provide reasonable evidence of its information security measures to Customer upon request. Supplier shall also notify Customer promptly of any actual or suspected security breach or incident that may impact Customer's systems or Customer Data.

## **21 Intellectual Property**

21.1 Except for IP Rights vested with Supplier as provided below, all ownership rights, title, and interest in and to Scope and Work Product will vest in Customer. The Contract does not grant Supplier Group any rights, title, or interest in or to Customer Group's IP Rights, other than those set out in the Contract. IP Rights created by modifications, amendments, enhancements, or improvements (including tailor-made to Customer) to Customer Group's IP Rights, or made using Customer Group's Confidential



Information, will vest with Customer or its nominee when created.

- 21.2 Supplier, warranting that it is entitled to do so, grants to Customer Group the irrevocable, non-exclusive, perpetual, worldwide, royalty-free right and license, with the right to grant sub-licenses, to possess, and use any of Supplier's IP Rights embodied in Scope, including the right to import, export, operate, sell, maintain, modify and repair Scope. Supplier warrants that any possession or use of Scope as delivered by Supplier or of Supplier's IP Rights will not infringe the IP Rights of any third party.
- 21.3 Customer's ownership rights in Scope under this clause will not extend to Supplier's IP Rights that: (i) pre-existed the performance under the Contract unless these certain IP Rights are required to effectuate the delivery of the Scope, Services Specification and/or Work Product herein; (ii) are developed independently from performance of the Contract; or (iii) are used by Supplier in connection with or to perform the Contract, but are not based on or arising out of Customer Group's IP Rights or Confidential Information.

## **22 Force Majeure**

- 22.1 Customer and Supplier are each excused from performance of the affected part of an obligation of the Contract while performance is prevented by a Force Majeure Event unless the event was contributed to by the fault of the party or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence.
- 22.2 Only the following are Force Majeure Events: (i) riots, wars, blockades, or threats or acts of sabotage or terrorism; (ii) earthquakes, floods, fires, named hurricanes or cyclones, tidal waves or tornadoes; (iii) radioactive contamination, epidemics, maritime or aviation disasters; (iv) strikes or labor disputes at a national or regional level or involving labor not forming part of Supplier Group or Customer Group, which materially impair the ability of the party claiming force majeure to perform the Contract; and (v) government sanctions, embargoes, mandates, or laws, that prevent performance.
- 22.3 A party whose performance is delayed or prevented due to a Force Majeure Event will notify the other party and use commercially reasonable efforts to mitigate the effects of any Force Majeure Event.
- 22.4 Customer may terminate the Contract or part of Scope if any Force Majeure Event results in a delay that exceeds 30 consecutive days or 60 cumulative days.

## **23 Governing Law, Dispute Resolution, Remedies**

- 23.1 The Contract, and any dispute or claim arising out of or in connection with the Contract or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the internal laws of the State of Delaware, excluding its conflict of law rules and choice of law principles that provide otherwise. The United Nations Convention on the International Sale of Goods will not apply to the Contract.
- 23.2 Any dispute or claim arising out of or in connection with the Contract or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination, and including any non-contractual claim, will be finally and exclusively resolved by the federal or state courts of the State of Delaware.
- 23.3 Customer is entitled to specific performance of the Contract.

**24 JURY WAIVER: SUPPLIER AND CUSTOMER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVE AND RELEASE ALL RIGHTS TO A JURY TRIAL OF ANY CLAIM, ACTION, SUIT, PROCEEDING, OR LIABILITY ARISING OUT OF, OR RELATING TO, THE CONTRACT AND CONSENT TO ANY SUCH CLAIM OR LIABILITY BEING TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY.**

## **25 General**

- 25.1 Retention of Rights and Remedies. The parties retain their rights and remedies under Applicable Law, subject to any provisions in the Contract that provide otherwise.
- 25.2 Waiver. A provision of the Contract is not waived unless made in writing by an authorized representative of the waiving party.
- 25.3 Notices. All notices or other communications under the Contract must be in English and in writing, and: (i) delivered by hand; (ii) sent by prepaid courier; (iii) sent by registered post; or (iv) sent by email with confirmation receipt requested. Notices and communications are effective when actually delivered at the address specified in the Contract.
- 25.4 Survival. Provisions that state that they survive or by their nature are intended to survive completion of performance or termination of the Contract do so, along with all remedies attached to them, including the representations, warranties, indemnities, and confidentiality obligations under the Contract.



- 25.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, such invalidity, illegality, or unenforceability will not make the Contract as a whole invalid, illegal, or unenforceable, but such provision or part-provision shall be deemed deleted from the Contract. If any provision of the Contract is deemed deleted under this clause 25.5, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 25.6 Amendments. Amendments to the Contract must be made in writing and signed by the parties' authorized representatives in order for the amendment to be binding.
- 25.7 Relationship of the Parties. Supplier is an independent contractor in all aspects of performance under the Contract. Supplier and Supplier Personnel are not to be considered employees of Customer Group. Neither the Contract nor its performance creates a partnership or joint venture. No party is appointed as agent of the other.
- 25.8 Group Rights. Any member of Supplier Group or Customer Group not a party to the Contract but conferred rights in it are entitled to enforce those rights but are not required to consent to amend or terminate those rights.
- 25.9 Assignment. An assignment or novation by a party of all or part of the Contract requires the written consent of the other party, except that Customer may assign and novate all or part of the Contract to Customer's Affiliate by giving written notice to Supplier.
- 25.10 Publicity: Supplier shall not use or produce any publicity, news releases and/or public announcements regarding Customer Group, their names, logos, products or associated logos, without the prior written consent of Customer.
- 25.11 Supplier Personnel and Subcontracting. Supplier may not subcontract any part of its obligations under the Contract except as agreed in writing by Customer and Supplier is responsible for any Scope performed by, and all activities, omissions, and defaults of, any subcontractor and all Supplier Personnel as if they were the activities, omissions, or defaults of Supplier.
- 25.12 Entire Agreement. The Contract sets forth the entire agreement between the parties concerning its subject matter and supersedes any other agreements or statements pertaining to the same subject matter, except those agreements or statements expressly

referenced in the Contract as included. Any confidentiality agreement pertaining to the subject matter will remain in effect according to its terms, unless the Contract provides that it is terminated or replaced.



## Appendix 1 – Data Processing

- (a) The expressions "Data Processor", "Data Subject", "Personal Data Breach" and "Process" have the meanings given to them in the Applicable Data Protection Laws.
  - (b) Supplier must duly observe all its obligations under the Applicable Data Protection Laws which arise in connection with the provision of the Services under the Contract and not do anything which puts Customer in breach of the Applicable Data Protection Laws.
  - (c) Insofar as Supplier Processes Personal Data for Customer as a Data Processor, Supplier must:
    - (i) process the Personal Data solely on the documented instructions of Customer, for the purposes of providing the Services;
    - (ii) process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, and in the manner agreed by the parties;
    - (iii) take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data;
    - (iv) take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential;
    - (v) for Personal Data in the UK or the European Economic Area (EEA), not transfer the Personal Data to any country outside the UK or the EEA without the prior written consent of Customer, unless required to do so by Union or Member State law to which the Supplier may be subject; in such a case, Supplier shall inform Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
    - (vi) not permit any third party to Process the Personal Data without the prior written consent of Customer, such consent to be subject to Supplier meeting the conditions set out in Article 28 (2) and (4) of the GDPR;
    - (vii) promptly notify Customer of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either party's obligations under the Applicable Data Protection Laws in respect of the Personal Data;
- (viii) immediately upon becoming aware, and in any case within 24 hours, notify Customer of any Personal Data Breach, such notice to include all information reasonably required by Customer to comply with its obligations under the Applicable Data Protection Laws;
  - (ix) permit Customer, on reasonable prior notice, to inspect and audit the facilities and systems used by Supplier to Process the Personal Data, the technical and organisational measures used by Supplier to ensure the security of the Personal Data and any and all records maintained by Supplier relating to that Processing;
  - (x) provide any assistance reasonably requested by Customer in relation to (i) any communication received under sub-clause (vii), as well as any similar communication received by Customer directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by Customer;
  - (xi) where requested by Customer, delete any Personal Data in accordance with Customer's then current data retention policy; and
  - (xii) cease Processing the Personal Data immediately upon the termination or expiry of the Contract and at Customer's option either return, or securely delete the Personal Data.