



TERMS AND CONDITIONS OF PURCHASE

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THE TERMS AND CONDITIONS APPLICABLE TO ANY PURCHASE ORDER ARE LIMITED TO THOSE CONTAINED HEREIN.

1. Definitions.

“*Affiliate*” means any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with the Buyer or the Seller as applicable. “*Buyer*” means Cortland Industrial, LLC.

“*Purchase Order*” means the offer by the Buyer, on the Buyer’s form, to purchase the Supplies from the Seller including releases under blanket Purchase Orders.

“*Seller*” means the person, firm or corporate entity named in the Purchase Order from whom the Buyer has agreed to purchase the Supplies.

“*Supplies*” means the products, supplies, equipment and/or services to be provided to the Buyer by the Seller as specified in the Purchase Order.

“*Terms*” means these Terms and Conditions of Purchase, which are hereby expressly incorporated into and form a part of the Purchase Order.

2. Terms of the Purchase Order; Offer/Acceptance.

The Purchase Order is an offer by the Buyer to purchase the Supplies from the Seller on the terms of the Purchase Order. The Buyer shall have the right to rescind the Purchase Order at any time prior to the Seller’s acceptance. The Seller shall be deemed to have accepted the Purchase Order and a binding contract formed upon the earliest of: (a) the Seller commencing work or performance with respect to any part of the Purchase Order, (b) the Seller delivering written acceptance of the Purchase Order to the Buyer, (c) any conduct by the Seller that fairly recognizes the existence of a contract for the purchase and sale of the Supplies, or (d) three (3) days following the Buyer’s delivery of the Purchase Order to the Seller. The following documents are incorporated into and shall be part of the Purchase Order: (i) any executed supply or corporate agreement between the Buyer and the Seller, (ii) prints and specifications for the Supplies, (iii) the Buyer’s policies that have been communicated to the Seller, as revised by the Buyer from time to time, and (iv) any written agreement between the Buyer and the Seller which provides therein that it shall be part of the Purchase Order. The purchasing terms and conditions of the Buyer’s customer will be incorporated into and shall be part of the Purchase Order if such are identified by the Buyer. In the event of a conflict

between the documents comprising the Purchase Order, the terms imposing the most stringent obligations upon the Seller shall govern.

3. Quantity. From time to time, the Buyer may provide the Seller with volume and/or quantity forecasts or projections for the Buyer’s Supplies needs. The Seller acknowledges that the projections, unlike a Purchase Order, are for planning purposes only and are not binding on the Buyer. The Buyer makes no representation, warranty or guaranty of any kind or nature whatsoever as to the accuracy of the projections.

4. Delivery; Purchase Orders. The Seller shall manufacture and ship the Buyer’s requirements for the Supplies in such quantities, prices, and at such time as identified by the Buyer as firm orders in the Purchase Order, or if a blanket Purchase Order, in releases transmitted to the Seller from time to time. Time and quantities are of the essence under the Purchase Order. The Seller agrees to on-time delivery of the quantities and at the times specified by the Buyer as set forth in the Purchase Orders. The Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries, excess deliveries or any other delivery that is not an on-time delivery. If the Seller fails to achieve on-time delivery by the due date specified on the Purchase Order, the Buyer may, at its option, claim or deduct either: (a) one per cent (1%) of the Purchase Order price for each day’s delay in delivery by way of liquidated damages, up to a maximum of fifteen per cent (15%) of the total price of the Purchase Order, or (b) to the extent the Seller’s failure has resulted in the Buyer’s liability for damages to any other person or entity, a sum equal to the total amount of damages claimed or deducted by that person or entity. The Buyer may change the timing of delivery of previously scheduled shipments or direct temporary suspension of scheduled shipments from time to time in its sole and absolute discretion. Unless otherwise agreed upon by the Buyer or stated in the Purchase Order, all pricing and shipments are to be made DDP (Incoterms 2020) the Buyer’s facility with title passing to the Buyer upon delivery or payment, whichever is earlier, and risk passing to the Buyer upon completion of delivery per the applicable Incoterm. The Seller warrants full and unrestricted title to the Buyer for the Supplies delivered by the Seller, free and clear of any and all liens, restrictions, reservations, security interests or encumbrances. The Seller shall properly pack, mark, and ship the Supplies according to the requirements of the Buyer, the involved carriers and the country of destination. Before the Supplies are shipped, the Seller shall give the Buyer sufficient warning in writing of any hazardous or restricted material that is part of the Supplies. The Seller shall comply with all applicable international, national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including, but not limited to the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC.

5. **Price; Payment Terms.** The purchase price for the Supplies shall be stated in the Purchase Order. Except if stated to the contrary in the Purchase Order, the Buyer will pay undisputed invoices within ninety (90) days after the Buyer's receipt of conforming Supplies, the Seller's invoice and any additional documentation reasonably requested by the Buyer. The Buyer will not be liable for any state or federal taxes, duties, customs or assessments, including VAT tax, in connection with the Purchase Order and/or delivery of Supplies, unless agreed to in writing. The Seller acknowledges and agrees that the Seller's financial condition, insolvency and/or failure to timely pay its suppliers or other creditors may create a disruption in the supply chain. In the event the Buyer elects in its sole and absolute discretion to pay any of the Seller's obligations, the Buyer shall have the right to withhold from and set off against any funds due to the Seller from the Buyer the aggregate amount paid in respect of the Seller's obligations and, if such right of setoff is insufficient for the Buyer to immediately recover all such amounts, the Seller shall pay to the Buyer the remaining balance within ten (10) days of the Buyer's payment.

6. **Quality.** The Seller shall conform to all Buyer quality control guidelines, standards, and inspection systems. The Seller is responsible for the performance and quality of all of its suppliers from whom the Seller uses to produce Supplies. Following Buyer rejection of non-conforming Supplies, the Seller shall, in the Buyer's sole and absolute discretion, without prejudice to any other right or remedy of the Buyer: (a) accept the return of the Supplies at the Seller's sole expense, and refund to the Buyer the full invoice price plus all transportation and other charges; or (b) replace or repair the non-conforming Supplies with conforming Supplies, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by the Seller. The Seller's replacement or repair of Supplies will be performed on an expedited basis within the time frame(s) as requested by the Buyer but no more than five (5) days after the Buyer's notice to the Seller of non-conforming Supplies. All expediting expenses will be borne by the Seller.

7. **Warranty.** The Seller warrants to the Buyer, the Buyer's customer, and the end users of the Supplies and their respective customers, successors and assigns that the Supplies shall: (a) be new and conform in all respects to the Purchase Order and to all specifications, drawings, samples and other descriptions furnished by the Buyer or otherwise obtained by the Seller, (b) be free from all defects in design, workmanship and/or materials and be of the highest quality and workmanship, (c) be selected, designed, manufactured, assembled and packaged by the Seller based upon the Buyer's stated use and be fit and sufficient for the purposes intended by the Buyer, (d) conform to all applicable laws in countries where the Supplies (or the Buyer's products into which the Supplies are incorporated) are to be sold, and (e) for all Supplies which consist of services, the Seller further warrants that its work shall

be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed to with the Buyer and otherwise consistent with the highest industry standards. All warranties of the Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. The Seller's defects correction obligations under these warranties shall run to the latest of the following: (i) thirty-six (36) months from the date the Buyer ships the Supplies, or the end product into which the Supplies are incorporated, to the Buyer's customer, (ii) the warranty period provided by applicable law, (iii) the warranty period offered by the Buyer to the Buyer's customer, or (iv) the warranty period the Buyer's customer offers to end-users of the Supplies or for the products into which the Supplies are incorporated.

8. **Remedies; Indemnification Obligation.** The rights and remedies reserved to the Buyer in each Purchase Order shall be cumulative with and in addition to all other legal or equitable remedies available to the Buyer. The Seller is liable for all damages incurred by the Buyer as a result of the Seller's: (a) breach of any representation or warranty set forth in the Purchase Order; (b) failure to timely deliver conforming or otherwise non-defective Supplies; and/or (c) failure to comply with the Purchase Order, even if the Seller has cured the breach. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE BUYER, THE BUYER'S CUSTOMER AND THE END- USERS OF THE SUPPLIES AND ALL OF THEIR RESPECTIVE AGENTS, CUSTOMERS, INVITEES, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AGAINST ALL DAMAGES, LOSSES, CLAIMS, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' AND OTHER PROFESSIONAL FEES, SETTLEMENTS AND JUDGMENTS) ARISING OUT OF OR RESULTING FROM ANY DEFECTIVE SUPPLIES, OR FROM ANY ACT OR OMISSION OF THE SELLER OR THE SELLER'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, OR ANY BREACH OR FAILURE BY THE SELLER TO COMPLY WITH ANY OF THE SELLER'S REPRESENTATIONS OR OTHER TERMS AND CONDITIONS OF THE PURCHASE ORDER (INCLUDING ANY PART OF THESE TERMS) INCLUDING THE COST OF ANY REMEDIAL ACTIONS.

9. **Changes.** The Buyer reserves the right at any time, by written notice to the Seller, to make changes, or to require the Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of the Supplies. The Seller shall not make any changes to the Supplies without the prior written consent of the Buyer.

10. **Force Majeure.** Any delay or failure of either party to perform its obligations shall be excused if and only to the extent

that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as: acts of God, restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, embargoes, fires, explosions, pandemics, natural disasters, riots, wars, sabotage, or court injunction or order (collectively "**Force Majeure**"). For avoidance of doubt, Force Majeure shall not include: strikes, labor shortages, changes in market conditions, climatic conditions, economic hardship, late delivery, equipment failure, failure in Seller's supply chain, unless such events or occurrences in themselves are caused by Force Majeure. The Seller shall use its best efforts to mitigate adverse effects or costs to the Buyer due to any actual or potential Force Majeure. Seller's failure to promptly notify Buyer in writing of a Force Majeure event shall constitute an absolute waiver of Seller's right to relief under this Clause.

11. **Termination.** The Buyer may terminate immediately the Purchase Order should Seller commit a breach or otherwise be in default of any of its material obligations under the Purchase Order. Buyer's termination shall be effective upon delivery of written notice or upon such other date specified by the Buyer in writing. The Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of the Purchase Order at any time and for any reason upon seven (7) days written notice to the Seller and without any liability to Seller except to pay a reasonable amount for work performed by Seller and received by Buyer under the Purchase Order up until termination.

12. **Insurance.** The Seller shall maintain and require its subcontractors and suppliers to maintain the following insurance coverage (or any other corresponding international policies): (a) comprehensive general liability insurance with minimum limits of 1 Million USD (or equivalent) per occurrence and in the aggregate, (b) comprehensive automobile liability insurance, (c) business interruption insurance, (d) workers compensation and employer's liability insurance covering all employees engaged in the performance of this Purchase Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations. In each case, the Seller's insurance coverage will name the Buyer, its Affiliates and any other parties requested by them, as loss payees and/or "additional insureds" and the coverage will be in such amounts sufficient to cover obligations set forth herein, statutory minimum limits, or in such amounts required by the Buyer. The Seller shall furnish to the Buyer a certificate (or any other similar proof of insurance) showing full compliance with the requirements set forth in this Clause within ten (10) days of the Buyer's written request.

13. **Audit; Plant Inspections.** Upon reasonable notice to the Seller, the Buyer, its agents or representatives, or a governmental agency (when Supplies are being procured under

a government contract), may audit the Seller's production facility, the Supplies and any other Seller property (including all pertinent documents, data and other information) related to the Purchase Order for the purpose of verifying the Seller's costs and its compliance with or its ability to perform its obligations under the Purchase Order. The Seller shall provide, without additional charge, all reasonable access, facilities and assistance.

14. **Intellectual Property.** The Seller warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to the Seller and do not and shall not infringe any third-party's intellectual property rights. The Seller agrees to defend, hold harmless and indemnify the Buyer, Buyer's customer, the end-users of the Supplies, and their respective employees, agents and Affiliates against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's intellectual property or intellectual property rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Supplies. The Seller grants the Buyer, the Buyer's customer, and the end-user of the Supplies, a perpetual, worldwide, fully paid-up, irrevocable, transferable, sub- licensable, non-exclusive, royalty free license to use the intellectual property rights in the Supplies. Any intellectual property created under or arising out of the Purchase Order will be the sole property of the Buyer and its Affiliates. The Seller agrees to take all steps necessary to perfect the Buyer's ownership to the intellectual property.

15. **Confidential Information.** Any information or knowledge which the Buyer may have disclosed or may hereafter disclose to the Seller (including the existence of this business relationship with the Buyer) in connection with the Purchase Order and any and all Supplies, or services to be rendered and/or work to be performed pursuant to the Purchase Order is and shall be deemed confidential and proprietary information of the Buyer. The Seller shall not, without authorization in writing from the Buyer, use communicate or disclose such confidential and proprietary information of the Buyer or use such information for any purpose other than to perform its obligations under the Purchase Order. The Parties confidentiality obligations shall cease five (5) years from the date the Contract is completed or has otherwise ended.

16. **Social Responsibility and Protection of the Environment.** The Seller shall comply with all applicable laws and regulations regarding environmental protection.

17. **Compliance with Laws; Ethics.** The Seller warrants that the Seller, and all Supplies furnished by the Seller under the Purchase Order shall comply with all applicable international,

local, state, Federal, and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time, including compliance with the United States Foreign Corrupt Practices Act (FCPA), the UK Bribery Act and similar international regulations (where applicable). In accordance with applicable "Conflict Minerals" laws, the Seller must determine whether its products contain tin, tantalum, tungsten or gold originating in the Democratic Republic of the Congo and adjoining countries. If requested, the Seller will promptly provide information or representations that the Buyer reasonably believes are required to meet these compliance obligations. Failure by the Seller to comply with the above shall constitute a material breach of the Purchase Order.

18. **Trade Compliance.** The Seller shall comply with all applicable import and export control, trade, and financial sanctions laws, rules, and regulations, including but not limited to the U.S. Export Administration Regulations, U.S. trade and financial sanctions laws and regulations, and other foreign trade control laws and similar laws of the territory where the Seller operates (together "**Trade Restrictions**"), relating to the performance of its obligations hereunder. The Seller specifically represents and warrants that it shall not use, resell, export, reexport, distribute, transfer, dispose of or otherwise deal with the Supplies, directly or indirectly, except in full compliance with such Trade Restrictions, including but not limited to licensing requirements. Failure by the Seller to comply with applicable Trade Restrictions shall constitute a material breach of the Purchase Order. The Seller shall be solely responsible for applying for and obtaining appropriate governmental authorizations for the export and import of any equipment, software, technology or services to or for the benefit of the Buyer. The Seller warrants, undertakes, and represents to the Buyer that neither the Seller, its directors, executive officers, senior management, key employees, agents, shareholders nor persons having a controlling interest in the Seller are: (a) persons targeted by national, regional or multilateral trade or financial sanctions under applicable laws and regulations, including but not limited to persons designated on the United States Department of the Treasury, Office of Foreign Assets Control's ("OFAC") List of Specially Designated Nationals and Other Blocked Persons (including terrorists and WMD proliferators), United States State Department Non-proliferation Sanctions Lists, United States Department of Commerce Denied Parties List, Entity List or Unverified List, United Nations Financial Sanctions Lists, or the European Union or United Kingdom HM Treasury Consolidated Lists of Financial Sanctions Targets, in force from time to time, or (b) directly or indirectly owned or

controlled by or acting on behalf of such persons (together "**Restricted Persons**"). The Seller shall not use, resell, export, reexport, distribute, transfer, dispose of or otherwise deal with any of the Supplies, or any items related to the Supplies, directly or indirectly, to or for the benefit of: (i) a person or entity located in or organized under the laws of Crimea, Cuba, Iran, North Korea, Syria or the Donbas region of Ukraine (which includes Donetsk and Luhansk), or (ii) a Restricted Person. Seller, its employees and agents have not, and shall not, at any time (i) make any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) make any payment, or offer anything of value, to any governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or permitted by the laws of the United States or any applicable jurisdiction. [Seller shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. Unless otherwise granted an exemption, Seller shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.]¹

19. **The Buyer's Limited Liability to the Seller.** THE BUYER'S SOLE LIABILITY UNDER THE PURCHASE ORDER (INCLUDING ITS TERMINATION, EXPIRATION OR CANCELLATION) IS TO PAY FOR THE SUPPLIES IN ACCORDANCE WITH THIS CLAUSE. UNDER NO CIRCUMSTANCES SHALL THE BUYER BE LIABLE TO THE SELLER OR ANY THIRD PARTY FOR LOSS AND/OR DEFERRAL OF PRODUCTION, LOSS OF PRODUCT, LOSS OF USE, LOSS OF REVENUE, PROFIT OR ANTICIPATED PROFIT (IF ANY) IN EACH CASE WHETHER DIRECT OR INDIRECT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. **Assignment.** The Seller may not, without the Buyer's prior written consent: (a) assign or delegate (including, without limitation, by subcontract) its obligations under the Purchase Order, or (b) enter into a transaction that includes a sale of a substantial portion of its assets used for production of the Supplies, or a merger, sale or exchange of stock or other equity interests that would result in a change of control of the Seller. Buyer may assign or delegate its rights and obligations, in whole or in part, under these Terms and any order to any Buyer affiliate

¹ **Note to Draft:** If the intent is to become involved with the military at any time in the future it is recommended to include this clause.

or subsidiary or to any person or entity acquiring all of any portion of the business from the Buyer.

21. **Relationship of the Parties.** The Seller and the Buyer are independent contracting parties and nothing in the Purchase Order shall make either party the employee, agent or legal representative of the other for any purpose.

22. **Governing Law.** These Terms and all Purchase Orders shall be governed by and construed in accordance with the internal laws of the State of Texas, USA without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to these Terms, the Supplies or a Purchase Order shall be instituted exclusively in the Texas State or Federal Courts located in Harris County, Texas and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

23. **No Waiver.** The Buyer's failure to insist on the performance by the Seller of any term or failure to exercise any right or remedy reserved in the Purchase Order, or the Buyer's waiver of any breach or default by the Seller shall not waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

24. **Severability.** If any provision of the Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

25. **Survival.** The obligations of the Seller to the Buyer survive termination of the Purchase Order, except as otherwise provided in the Purchase Order.

26. **Entire Agreement; Modifications.** The Purchase Order is the entire agreement between the parties respecting the Supplies and supersedes any prior agreements, negotiations or understandings of the parties respecting the Supplies, whether written or oral, except that a signed prior agreement (such as an award letter, statement of work, development, or non-disclosure agreement) will continue to apply to the extent not directly in conflict with the Purchase Order.