

**PHINIA GROUP GENERAL TERMS AND CONDITIONS OF SALE-
GLOBAL (ENGLISH)**

(11/04/2024)

1. Scope

The following Terms and Conditions of Sale-Global (English) (hereinafter: **"Terms of Sale"**) shall apply to any purchase of products (hereinafter: "Products") and the services in connection thereto (hereinafter: "Services") from any PHINIA group member (hereinafter: **"Seller"**) by the Buyer. These Terms of Sale shall apply especially, but not limited to, any quotation of Seller to Buyer that references them and to any subsequent agreement entered into between the parties. In case of conflicts between the Terms of Sale and the quotation, the terms of the quotation shall prevail. Any additional or different terms and conditions contained in any documents of Buyer (including but not limited to any RfQ, other pre-quotation documents or ordering documents) are nullified and shall have no binding effect with respect to any purchases of products and thus their application in relation to Seller will be excluded even if they are not expressly contradicted by Seller. Seller specifically rejects any attempt by Buyer to include different or additional terms of sale at any time and only Seller's signed consent will bind it to any different or additional terms hereinafter transmitted in any form by the Buyer.

2. Acceptance of the quotation.

Any of the following acts shall constitute Buyer's acceptance of the quotation and all terms and conditions herein:

- (a) Seller's receipt of the quotation signed by Buyer or other written indication of acceptance,
- (b) Buyer directs Seller to commence any of the work or services identified in the quotation; or
- (c) Buyer accepts delivery of any of the products identified in the quotation.

Upon acceptance, the quotation shall become a valid and binding agreement (hereinafter: **"the Agreement"**) between Buyer and Seller.

3. Offers and Acceptance of orders/ Approval of drawings

3.1. If Buyer changes or adds to an order after the order has been confirmed, Seller reserves the right to adjust prices and extend the delivery schedule.

3.2 The ordered Products including Services will be manufactured and provided by Seller in accordance with the Buyer's requirements. Accordingly, the Buyer must include the relevant specifications, technical data, weights, plans, sketches, dimensions, details of material, viscosity, tensile strength, current drawings, etc. (hereinafter: **"Quality Specifications"**) in each order. These Quality Specifications as such must be agreed in writing by the parties.

3.3 The Quality Specifications originate exclusively from the Buyer, will be provided to Seller by Buyer, and Seller will manufacture the Products accordingly. Seller is not obliged to review the Quality Specifications and the other documents submitted by Buyer for accuracy and feasibility. The Quality Specifications always require an express written approval by the Buyer; otherwise, Seller is not obliged to perform. Any and all responsibility on the part of Seller for the construction and design of the Products is excluded.

4. Call-Offs and Forecasts

4.1. Where the parties have entered into an individual contract for Products on the basis of a framework order and delivery volumes and delivery dates have not yet been firmly agreed, the individual deliveries will be specified by call-offs of the Buyer. The following provisions apply to call-offs if and to the extent the Agreement does not provide otherwise:

4.2. With each call-off, the Buyer will also provide Seller with a forecast of the call-offs to be expected over the next 12 months (hereinafter: „Forecast“). Seller will adapt its production and delivery capacities accordingly to the extent possible.

4.3. Each call-off received by Seller also includes the release of the ordered Products for manufacture and delivery.

4.4. Seller shall be entitled to object to delivery call-offs from Buyer if:

- they exceed the purchase quantities forecast by more than 15% or if, based on the call-off or ordering behavior of Buyer, such an exceedance appears reasonable possible in the current forecast period.
- Seller is unable to fulfil the delivery call-off due to capacity or delivery shortages or for other legal or factual reasons,
- Seller is entitled to a right of retention.

4.5. Each Forecast by Buyer is binding:

- (a) for the manufacture and delivery of the finished Products during the first 3 months of the Forecast;
- (b) for the purchase of raw materials/primary materials during the next 3 months of the Forecast;
- (c) for the purchase of customer-specific, project-specific or any other primary materials that cannot otherwise be used by Seller during the next 6 months of the Forecast thereafter.

The Forecasts are otherwise nonbinding.

4.6. If the Buyer does not place any call-offs with Seller contrary to the information provided in a Forecast, Buyer must reimburse all costs and/or prices for the purchase, processing and/or storage of the items listed in clause 4.5 (a) to (c) for which the Forecast is binding. To the extent the items purchased according to clause 4.5 (b) and (c) have not yet entered production at Seller, the Buyer must at least make payment to Seller in the amount of the purchase prices of Seller plus a surcharge of 5%.

4.7. If Buyer calls off 15% more than what has been projected in the Forecast, Seller is not obliged to deliver more than the volume contained in the Forecast plus 15%.

4.8. If Seller realizes upon the receipt of the Forecast that Seller will probably not be able to perform in accordance with the call-offs likely to be received on the basis of the Forecast, Seller may object to the Forecast within 14 calendar days of its receipt. The corresponding call-offs do not have to be fulfilled by Seller.

4.9. Each Forecast period will be simultaneously extended by the time period that ends (e.g. by a week at week end, by a month at month end etc.), so that each Forecast is of a rolling character until Buyer provides a new call-off with a new Forecast or a overall new Forecast to Seller.

5. Delivery

5.1. Deliveries are FCA (Seller's Premises) Incoterms® 2020. Title to Products will transfer at Seller's dock. Delivery of the Products to a carrier properly addressed for transmission to the Buyer or its designated agent shall constitute delivery to the Buyer, who shall thereupon assume and bear all risk of loss or damage from any cause whatsoever. Any claim for loss or damage in transit must be prosecuted by the Buyer. If Buyer provides no carrier or routing instructions, the Seller shall have absolute discretion as to mode and routing of shipments. Buyer hereby grants Seller a security interest in the goods sold hereunder, securing Buyer's obligation of payment therefor. Buyer shall bear all import/export clearance responsibilities, Customs duties, personal property taxes and similar charges assessable or assessed on Products after title and risk of loss pass to Buyer.

5.2. Delivery dates are estimated and not guaranteed. Delivery lead times after receipt of order are noted in the quotation.

5.3. Changes to delivery schedules within six (6) weeks of the initial delivery date require prior written approval by Seller. If quantities or delivery schedules are not specified in the relevant order, they will be as reasonably determined by Seller and stated in Buyer's firm releases issued to Seller from time to time. It is expressly understood that there shall be no deferred delivery or cancellation without Seller's written consent. Buyer agrees to pay Seller all charges to change, expedite or cancel all or any part of the relevant order. Seller shall not be responsible for any delay in delivery for any unforeseen circumstances, or by circumstances beyond Seller's control, including, without limitation, government acts, fires, floods, strikes or other labor problems or shortage, embargo, transportation delays, accidents, war, weather conditions or inability to secure raw material. In such circumstances, Seller may terminate the Agreement or relevant order, at Seller's option, and without liability. Buyer acknowledges and agrees that if the relevant order cannot be shipped complete, partial shipment will be made and shipment of the outstanding balance will be as soon as practicable.

5.4. Seller may make partial deliveries. Variations in delivered quantities that are up to 10% more or less than the quantities ordered will be deemed complete deliveries. Buyer shall accept and pay for excess quantities within such limitations.

5.5. If the Buyer is in default of acceptance or is otherwise in breach of its duties to cooperate, Seller is entitled to reasonably store the Products at the risk and expense of the Buyer or to rescind the contract, irrespective of any further rights to which Seller is entitled.

5.6. The late delivery of raw materials or components, as well as transport obstacles for which Seller bears no responsibility, will result in a reasonable extension of the delivery time. In such cases, Seller will notify the Buyer of the occurrence of such circumstances without undue delay.

If and to the extent Seller is not supplied with energy, raw materials, components, tools and/or other items needed for the production of the Products by reason of certain global and/or regional market constraints or supply shortages, Seller shall be free from its supply obligations and shall therefore not be held responsible by Buyer for any resulting limited ability or non-ability to comply with our supply obligations. The same shall apply if Seller is not supplied due to insolvency of one of its suppliers.

6. Packing and Packaging

Seller will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. If Buyer's returnable packaging is not available, Seller may use expendable packaging and Buyer will reimburse Seller for the reasonable costs of expendable packaging.

7. Price/Taxes:

7.1. The prices quoted in the quotation are firm for thirty (30) days from the day of quotation. Terms and conditions in the Buyer's contract documents under which Seller is always obliged to ensure, offer, or maintain the best and/or most competitive prices and terms (so-called "best price clauses") do not apply.

7.2. Unless prohibited by law, all taxes (including but not limited to privilege, personal property, excise, sales, duties, levies, use, value-added, and similar taxes) that the Seller is required to pay or collect in connection with sales of Products to Buyer under the Agreement or relevant order, shall be added to the

stated price and paid by the Buyer concurrently with payment for the related Products, without any discount. Each party shall bear any income or similar taxes assessed against it due to its receipt of money or value under the Agreement or relevant order.

7.3. Prices do not include transportation charges, unless otherwise provided in the quotation.

7.4. Prices quoted hereunder are subject to increase sufficient to compensate for any tax, duty or levy hereafter imposed by any governmental authority, or for any increase in price for the manufacture of the products ordered herein as a result of any change in the cost of raw materials.

7.5 Seller is entitled to adjust the agreed prices if and to the extent the costs of the materials or raw materials required by Seller to manufacture the Products have increased or decreased by at least 5% or the labor costs have increased or decreased by at least 5% or import duties and taxes have increased or decreased by at least 3%. The scope of the adjustment shall be based on the actual changes in costs. Seller will inform the Buyer of the price adjustment.

7.6 Seller may demand that the parties negotiate in good faith on an increase of the prices if the volume actually delivered and accepted by Buyer falls short of the delivery volume by more than 5%. If the parties do not come to an agreement on new prices within three months of the initiation of price negotiations by one party, each party is entitled to terminate the contract in question and/or the respective price agreement and any supply contracts entered into thereunder with immediate effect. Orders already in execution will still be processed after the notice of termination.

Should the ordered volumes of Buyer deviate from the planned annual volumes by more than 10 % in a Production Year, the prices shall be adjusted with retroactive effect for the Production Year in question as follows:

Increase of the part price by a percentage corresponding to half of the volume shortfall and elimination of any agreed annual price reduction.

A Production Year means the twelve (12) month period beginning on the SOP date, and each successive twelve (12) month supply period thereafter.

7.7 Should Buyer and Seller agree on a price adjustment, the new prices shall apply retroactively from the date on which Seller requested a negotiation on a price adjustment. Savings, rebates and other payments, settlements or adjustments that have a direct or indirect effect on the price shall be deemed to be suspended indefinitely. If the costs on whose increase Seller has based its request for a price adjustment fall again, Buyer may demand a negotiation in good faith on the reintroduction of the adjusted price for the future.

8. Buyer changes and Delays:

8.1 Each party may demand a change to the Products or Services at any time (hereinafter: „**Change Request**“). The Change Request must be made in writing and must contain sufficient information to allow the other party to evaluate the Change Request.

8.2 If changes to the Products or Services or to the tools required for the manufacture of the Products lead to additional costs, such costs will be borne by the Buyer in any event. In general, this also applies regarding the costs for all other changes unless Seller is solely responsible for the changes.

8.3 Seller will send the Buyer an offer within a reasonable period after the receipt of the Change Request.

8.4 A Change Request will become binding if the parties have come to a written agreement on the change and its effects, particularly with regard to the assumption of costs (hereinafter: „**Change Agreement**“). The

consent to a change may not be unreasonably withheld. Seller is not obliged to execute changes before the parties have reached a Change Agreement.

8.5 In any event, Seller is allowed to make changes to Products before and during the duration of the serial supply if the changes do not alter the fit, form, or performance of the Products. The Buyer's approval, i.e. a Change Request and/or a Change Agreement pursuant to this clause 8, is only required for changes that affect the fit, form, or performance of the Products.

8.6 If Buyer requests or otherwise causes delay in the manufacture, assembly or shipment of the Products contemplated herein, Buyer shall pay Seller for all costs, expenses and damages incurred by Seller as a result thereof, including, but not limited to, any incidental and consequential damages, handling and storage expenses.

9. Payment Terms

9.1 Each invoice of Seller is due for payment without any deduction within 30 calendar days after the Seller issued the invoice. Payments by the Buyer are deemed to have been made only when Seller is able to dispose of the amount. If the balance due is not paid as provided herein, Seller may charge the maximum interest rate as may be provided by law, which fee shall be added to the outstanding balance due.

9.2 A stop shipment order may be issued under Seller's right of retention if payment is not received on a timely basis. Buyer also agrees to pay Seller for all reasonable costs and expenses incurred in collecting amounts due and outstanding, including reasonable attorneys' fees. Payment for the Products and Services purchased hereunder shall not be subject to set-off, debit or recoupment.

10. Right of Retention

Seller can exercise a right of retention with respect to future deliveries in the event that (i) Buyer is in default or delay of any due payment; (ii) Seller assumes or anticipates a default in payment; or (iii) has reasonable doubts as to the Buyer's ability to perform.

11. Inspection and Warranty:

11.1. Buyer shall inspect or test the Products sold hereunder for any defect or non-conformity within 3 days after delivery. Buyer must give Seller written notice of any defect within five (5) days of said inspection in order for Buyer to reject any Products sold hereunder. Buyer will be barred with respect to rejection or any other remedy unless Buyer timely notifies Seller and holds the Products for Seller's inspection. After acceptance of the Product, Buyer shall give notice of any defects as provided herein.

11.2. Seller warrants that the Products manufactured will be in accordance with the specifications and will be of good quality material and workmanship under normal use and service. This Warranty shall extend for a period of twelve (12) months from the date of delivery to Buyer. Seller's sole liability for warranty claims hereunder shall be to repair or provide a replacement Product, or allow a credit, at Seller's sole option, for any non-conforming part. Seller shall have no liability to Buyer or any other third party for any indirect, incidental or consequential damages, including but not limited to lost profits, income or opportunity, damage to or loss of property; damages incurred in installation, repair or replacement; loss of use; losses resulting from or related to downtime of Products; the cost of replacement transportation; the cost of substitute products; or claims of Buyer or Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract and/or tort (including negligence, strict liability or otherwise). Replaced parts will be warranted in time only through the remaining period of this Warranty. Seller shall not be obliged to repair or replace any non-conforming part unless it receives notice from Buyer, in writing,

within 14 days of discovery of a defect. Buyer shall be barred from any action for breach of warranty, contract or otherwise, unless Buyer timely notifies Seller as provided herein. Specifically excluded from this Warranty are: (i) design defects or defects or damage caused by improper installation, neglect, improper maintenance, handling or operation of the Products by Buyer or any third party; (ii) Products considered by Seller to be prototype, development or pre-production; (iii) Products that have been subject to damage attributable to or caused by misuse, abuse, or vandalism or any transit related damage; acts of God or insurrection; normal wear and tear; foreign object entry; any part not supplied by Seller; any repair, maintenance or service by anyone other than Seller's factory-authorized service provider; or any other acts that are beyond Seller's reasonable control. Further, this Warranty shall not apply if Buyer or any third party attempts to repair or replace the defective part without Seller's written authorization. Seller expressly disclaims any and all warranties relative to the foregoing circumstances. Any auxiliary equipment sold hereunder and not manufactured by Seller carries only such warranty as given by the manufacturer thereof and which is hereby assigned to Buyer without recourse to Seller. **THIS IS SELLER'S SOLE WARRANTY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

12. **Samples:** Unless Seller otherwise agrees in writing, samples and/or Prototypes are for examination and test purposes only and as such are not covered by Seller's warranty.

13. **Intellectual Property:** Seller retains all right, title and interest in and to all its pending and issued or granted patents, utility models, continuations, continuations-in-part, reissues, renewals, extensions, re-examinations, and equivalents thereof, trade secrets, know-how, proprietary information, inventions, discoveries, improvements, technology, technical data, work products and the contents thereof, and research and development, whether or not patentable, trademarks, trade names, and equivalents, thereof, design rights and equivalents thereof, copyrights, registrations and applications thereof, as well as any other intellectual property (rights) (the "Intellectual Property Rights") conceived, discovered, authored, invented, or developed prior to or outside of the Agreement or order (the "Background IP"). Seller also retains all right, title and interest in all Intellectual Property Rights conceived, discovered, authored, invented, or developed during the course of, under and/or in connection with the Agreement or order (the "Foreground IP"). Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free and fully paid-up right to use the Background IP to the extent strictly necessary for the use and distribution of the Product. In addition, Seller hereby grants to Buyer a non-exclusive, non-transferable, sublicensable, worldwide, royalty-free and fully paid-up license to the Foreground IP strictly necessary for the use and distribution of the Product. Unless expressly indicated in the Agreement or order, nothing in the Agreement or order shall constitute or grant any implied license or ownership in proprietary rights or permission to file any patent, copyright or any other Intellectual Property Right to the Buyer. The use of any Foreground IP by Buyer is on its own risk, even if it was conceived, discovered, authored, invented, or developed by Seller or any of its employees and/or agents.

14. **Patent and Trademark Infringement:** Buyer shall defend and protect Seller in any action, civil or criminal, brought against Seller by any third party, for unfair competition or for infringement of any domestic or foreign patent, design patent, trademark, copyright, or for any other claim arising out of the manufacture and sale by Seller of any Products which have been manufactured to specifications furnished by Buyer and/or arising out of the reproduction by Seller of the Products of any design mark, or emblem furnished or designated by Buyer.

Buyer further agrees to hold Seller harmless from all expense, judgment, damages or loss resulting therefrom. The supply of Products to Buyer by Seller shall not cause, vest or establish any right or license in

Buyer under any patent or patent application now or hereafter owned or controlled by Seller to make or have made such Products.

15. Information Security

15.1. The Buyer is solely responsible for the security of their information systems and data. The Buyer must take appropriate measures to protect their systems and data from security breaches, including but not limited to, hacking attacks, viruses, malware, or other forms of cyber-attacks.

15.2. The Seller assumes no liability for losses or damages incurred by the Buyer due to security breaches, unless these breaches are directly attributable to intentional or grossly negligent behavior on the part of the Seller.

15.3. The Buyer undertakes to inform the Seller immediately if they become aware of a security breach affecting the Products or Services supplied by the Seller.

15.4. The Buyer indemnifies the Seller from all claims by third parties that are raised due to a security breach, unless this breach is directly attributable to intentional or grossly negligent behaviour on the part of the Seller.

16. Confidentiality

To the extent no separate confidentiality agreements have been agreed upon, the following applies:

16.1. Buyer and Seller undertake to treat as confidential all confidential information they receive directly or indirectly from the other party. Quotations and all the commercial and technical details relating to them are also to be treated as confidential. In particular, all of the images, drawings, calculations, quality guidelines, samples and similar items received must be kept secret. The reproduction and disclosure of confidential information is only permitted within the scope of business requirements. They may only be disclosed to third parties upon prior consent in written form.

16.2. The foregoing obligations do not apply to such confidential information for which the party receiving the information can prove that it

- a) was already in the public domain at the time of its disclosure or entered the public domain thereafter through no fault of the receiving party;
- b) was already in the possession of the receiving party at the time of disclosure;
- c) was made available to it by a third party who was not subject to a non-disclosure obligation and the obligation to refrain from using it, whereby this requires, that such third party did not receive the information directly or indirectly from the other party;
- d) must be disclosed to government authorities on the basis of statutory provisions.

16.3. The confidentiality obligation will survive the end of the business relationship for a period of 5 years. The Buyer is obliged to surrender to Seller all confidential information it has received upon the end of the business relationship, to the extent it is physical in nature or is stored on electronic data storage media. The Buyer must confirm its compliance with the obligations under the last two sentences to Seller in writing upon Seller's request.

16.4. Buyer undertakes to effectively protect all confidential information they receive against unauthorized access, alteration, destruction or loss, unauthorized transmission, other unauthorized processing, and other misuse in accordance with the current state of the art. Buyer is obliged to notify Seller

in the event of any data breach or non-compliance with this clause.

17. **Indemnification:** To the fullest extent permitted by law, Buyer expressly agrees to indemnify and hold harmless Seller, its affiliates, officers, directors, employees, agents, attorneys, successors and assigns (“Indemnified Parties”), and defend the Indemnified Parties from and against any and all claims, liability, lawsuits, losses, costs, expenses or damages (including reasonable attorneys’ fees) of any kind or nature whatsoever claimed by any person or entity, including employees, servants or agents of Buyer, including without limitation claims for personal injury (including death) or property damage, whether such claims are premised on contract, tort or otherwise, including strict liability, which arise out of or result from, or are in any way connected with any of the work contemplated by the Agreement and or relevant order and/or Products sold or Services provided hereunder, or if Seller’s employees are injured on Buyer’s premises in connection with the Agreement and or relevant order, except to the extent of Seller’s willful or gross misconduct.

18. **Limitation of Liability:** Seller’s aggregate liability for any and all claims arising out of the Agreement and/or relevant order or any other contract agreed under these Sales Terms or the Services and/or Products sold herein, whether based upon contract, tort, warranty, negligence, indemnity or any other claim, shall be limited to the total compensation received by Seller under the Agreement or relevant order during the year prior to the event creating such liability under the Agreement or relevant order AND IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS OR INCOME, LIQUIDATED, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

19. **Tooling:** All tooling required to produce the Products shall remain the property of the Seller unless specific arrangements are made otherwise. In such case, Seller’s responsibility in connection with special tooling is limited to proper handling in manufacture and storage and adequate insurance. The Buyer is responsible for costs resulting from (a) requested alterations, (b) major repairs or replacement caused by normal wear; and (c) requests for shorter lead times and/or increased rate of delivery.

20. **Delivery of Service Parts**

20.1. If serial supply is made, Seller is obliged to supply the Buyer with service parts during the serial production of the Products and for a period of 10 years after the serial production has been discontinued whereby the parts must comply with the agreed quality requirements. Seller is entitled, however, to supply products of an equivalent quality after the discontinuation of the series, which then comply with the state of the technology applicable at such time.

20.2. Seller’s obligation under clause 20.1 also applies for materials, raw materials or components for the Products Seller purchases from third parties, provided they are still available on the market in the form in which they were originally purchased by Seller.

20.3. Following the discontinuation of the serial production of the Products, the prices for service parts will be agreed on separately by the parties. If the parties are unable to come to an agreement on the price of a service part within two months of the discontinuation of the series or of a request for service parts by the Buyer, Seller will be released from its duty to supply service parts to the Buyer. Clauses 7.5 and 7.6 apply accordingly with respect to an adjustment of the agreed prices.

20.4. Warranty claims and liability will be governed by clauses 11 and 18.

21. **Force Majeure:**

Unforeseeable and unavoidable events which are beyond the control of Seller and for which Seller is not responsible (such as force majeure, war, natural disasters, strikes, lockouts, measures of a government authority, shortages of energy or raw materials, fire and explosive damages, cyberattacks, breakdowns in transportation and operations, acts of God or similar events) release Seller from its duty to make timely delivery or performance for the duration of the event. Events as described above also include, but are not limited to, the outbreak of an epidemic and/or pandemic (such as COVID-19), including the reoccurrence of the same at a later time and the resulting consequences, and the Russia-Ukraine crisis of 2022, including, but not limited to, plant closures at Seller and/or at Seller's suppliers and subcontractors, border closures or congestion, shortages of material, quarantine measures, orders by the local, regional or national authorities of any nature which limit or prohibit the operation of normal business, including, but not limited to, lockdowns, travel restrictions or rules on distancing. Agreed deadlines will be extended by the duration of the disruption; the Buyer will be informed of the occurrence of the disruption in an appropriate manner. If the end of the disruption is not foreseeable or if it lasts for more than three months, each party will be entitled rescind the contract with respect to the scope of performance affected by the disruption.

22. Termination

22.1 If Buyer terminates the relevant order and / or Agreement for any reason or if Buyer cancels any Program for the manufacture of Products purchased hereunder, Buyer will:

- (1) purchase completed Products at the contract price and work-in-process and raw materials at Seller's actual cost, in each case to the extent reasonable and authorized in Buyer's firm releases, and
- (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost of unreimbursed and unamortized research and development costs, tooling, engineering costs, capital equipment, Seller's property, supplies and that are unique to the Products and any other reasonable costs and expenses of Seller expended in furtherance of the Agreement or order.

22.2. Buyer will be in default under the Agreement, relevant order or these Terms of Sale if it (i) fails to perform any obligation under the Agreement, relevant order or these Terms of Sale and, if the non-performance can be cured, fails to cure the non- performance within 15 business days after notice from Seller specifying the non- performance, (ii) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (iii) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, (iv) fails to provide adequate assurance of performance under the Agreement, relevant order or these Terms of Sale within three business days after written demand by the other party.

22.3. If Buyer is in default under the Agreement, relevant order or these Terms of Sale, Seller may recover damages resulting from the default, including (i) the contract price for completed Products and Services and the cost of work-in-process and raw materials, and (ii) the cost of unreimbursed and unamortized research and development, capital equipment, Seller's property, and supplies that are unique to the Products.

22.4. Seller may immediately terminate the Agreement or relevant order without liability to Buyer if any accommodation by any other third party, financial or otherwise, not contemplated by the Agreement or relevant order, is made and is necessary for Buyer to meet its obligations to Seller under the Agreement or relevant order. Buyer will reimburse Seller for all costs Seller incurs in connection with clause 22 whether or not the Agreement or relevant order is terminated, including, but not limited to, all attorney or other professional fees. In addition, Seller may terminate the Agreement or relevant order upon giving at least 60 days' notice to Buyer, without liability to Buyer, if Buyer (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Buyer or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of

Buyer.

23. **Export Compliance**

Buyer agrees that it will not export or reexport or otherwise transfer any products or technical data provided hereunder to any country, person, entity or end-user subject to United States ("U.S.") or European Union ("EU") export restrictions. Buyer specifically agrees not to export or reexport any products or technical data provided hereunder (i) to any country or party to which the United States or European Union has at the time of the transfer embargoed or restricted the export or reexport of the relevant products or services; (ii) to any end-user who the Buyer knows will utilize any of the products or technical data in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Buyer agrees that the Seller may periodically request, and Buyer shall provide, written certification that Buyer has complied with all export control laws and trade sanctions including U.S. export control laws and trade sanctions. Any violation of this provision, as determined solely by the Seller, shall be deemed a material breach of this Agreement. Seller reserves the right to refuse to enter into or perform any order, and to cancel any order, placed under this Agreement if Seller in its sole discretion determines that the entry into such order or the performance of the transaction to which such order relates would violate any applicable law or regulation of the United States, or any other government.

24. **Governing Law, Fees, Venue and Statute of Limitations:** The Agreement, any order and these Terms of Sale have been made in and are governed by the substantive laws, exclusive of choice of law provisions, of the state where Seller's place of business is registered. Should in accordance herewith Chinese Law apply, the parties agree to arbitration in accordance with the rules of the International Chamber of Commerce in Shanghai. Notwithstanding the foregoing, any dispute related hereto that arises in India will be subject to arbitration in accordance with the rules contained in the Arbitration and Conciliation Act, 1996 and amendments thereto. Buyer shall pay Seller's reasonable attorney's fees, expenses and costs incurred in enforcing any of the provisions of the Agreement, any order and these Terms of Sale. Any legal action by Buyer which alleges breach of warranty or other breach, default or tortious act by Seller, must be brought by any Buyer, or any other person making a claim under the Agreement, any order and these Terms of Sale, within 2 years after the date of receipt of the Product(s) sold herein, or one year after such person could reasonably have discovered the basis for the action, whichever comes first.

25. **Assignment:** Neither party may assign the Agreement, any order and these Terms of Sale in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. The Agreement, any order and these Terms of Sale shall be binding upon the parties hereto, their employees, beneficiaries, agents, successors, heirs, and assigns. Any attempted assignment or subcontracting by either party without the required consent will not relieve that party of its duties or obligations under the Agreement, any order and these Terms of Sale or its responsibility for non-performance or default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Agreement, any order and these Terms of Sale to a designated subcontractor, Seller will not be responsible for a breach of the Agreement, any order and these Terms of Sale caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

26. **Relationship of the Parties:** Buyer and Seller are independent contractors, and nothing in the Agreement, any order and these Terms of Sale makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

27. **No Waiver by Seller:** Any failure by Seller to enforce strict performance of any provision of the

Agreement, any order and these Terms of Sale will not constitute a waiver of Seller's right to subsequently enforce such provision or any other provision of the Agreement, any order and these Terms of Sale.

28. **Seller's Rights:** The rights and remedies reserved by Seller herein shall be cumulative and additional to all other rights and remedies to Seller in law or equity.

29. **Integrated Agreement:** The Agreement, any order and these Terms of Sale may not be modified, cancelled, or rescinded, except by the written agreement of the Seller and Buyer's payment to Seller for all resulting losses and/or expenses incurred.

30. **Unenforceable Terms:** If any provision of the Agreement, any order and these Terms of Sale is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will 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 Agreement, any order and these Terms of Sale will remain in full force and effect.