

## General Terms and Conditions of Purchase - US

### 1. Acknowledge and Acceptance

These Terms and Conditions (these "Terms") govern the purchase of goods or services ("Goods" or "Services") by the purchasing entity identified on and issuing the applicable purchase order ("Buyer") from the individual or entity selling such Goods or Services ("Seller"). Acceptance is limited to the provisions contained in these Terms and Buyer's order and this order shall be accepted by executing and returning to Buyer the acknowledgment copy of this order; provided, however, that if Seller ships or delivers to Buyer any Goods or performs any Services covered by this order, without having first received Buyer's express written assent to any modification of or addition to these Terms, despite any language to the contrary in Seller's acknowledgment or confirmation, such action by Seller shall constitute a waiver of any such modified or additional language. Buyer's silence or Buyer's acceptance of any Goods shipped or delivered or of Services performed shall in no event be deemed an acceptance by Buyer of terms contained in any acknowledgment, confirmation or other communication received from Seller at variance with the provisions of these Terms or Buyer's order. If this order has been issued in response to Seller's offer to sell Goods to Buyer, the terms of which offer are different from or in addition to any of the provisions of these Terms or Buyer's order, then Buyer is only willing to proceed upon these Terms and acceptance of Seller's offer is conditional on Seller's assent to these Terms and provisions of this order. If Seller's offer does not state a specific date for acceptance, Buyer may accept such offer within thirty days from issuance.

### 2. Purchase Orders

Verbal or electronically transmitted orders shall be binding upon Buyer only if accompanied or promptly followed by a written purchase order. Seller shall confirm receipt of Buyer's purchase order within three business days following receipt. Seller shall promptly issue its written acknowledgement and acceptance of Buyer's purchase order. Buyer may cancel its order at any time prior to receipt of Seller's acknowledgement and acceptance.

### 3. Warranties

(a) Quality. Seller expressly warrants that at the time of delivery, and throughout the Warranty Period, all Goods covered by Buyer's purchase order (1) shall be merchantable, of state of the art quality and workmanship, and free from defects in design or manufacture, latent or patent, (2) shall conform to the drawings, specifications, requirements, descriptions and samples furnished by Seller or provided by Buyer, including, without limitation, all quality assurance requirements delivered to Seller, and (3) shall be suitable and sufficient for the purpose for which they are intended. Seller warrants that all Services will be performed with the highest degree of expertise and skill.

(b) Warranty Period. The warranty period for all Goods shall be forty-eight months from the date of Buyer's acceptance, and such period shall apply to any replacement Goods supplied by Seller, unless otherwise agreed by Buyer in writing.

(c) If Seller delivers defective or non-conforming Goods, Buyer may at its option and at Seller's expense: (i) require Seller to promptly correct or replace the Goods; (ii) return the Goods for credit or refund; (iii) correct the Goods; or (iv) obtain replacement Goods from another source. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense.

(d) Buyer may determine that the Goods are defective based upon random sampling. In such event, Buyer may reject the Goods in their entirety and return them to Seller at Seller's risk and expense. In the event of such rejection, Buyer may (1) require Seller to deliver conforming Goods; (2) undertake to re-work the defective Goods, or have a third party do so, and receive a credit or refund from Seller to the extent of the cost thereof; or (3) cancel its purchase order entirely without liability to Seller. Seller shall be responsible for separating defective Goods from conforming Goods, whether upon return or at Buyer's facility.

(e) Patents and Intellectual Property. Seller warrants that the sale, resale or use of the Goods furnished hereunder will not infringe, directly or indirectly, any patent, copyright, trademark, trade secret or other intellectual property rights of another party (except insofar as such infringement necessarily arises from the use of plans and specifications furnished by Buyer), and Seller agrees to indemnify, defend, protect and save harmless Buyer and its successors, assigns, customers, and users of the Goods from and against all claims, suits, actions and all damages, costs, and expenses (including, without limitation, all attorneys' fees and expenses) resulting from any and all notices, claims, suits, actions, fines, or proceedings based on any such actual or alleged infringement. Further, Seller shall, at its expense, immediately obtain the necessary licenses and/or usage rights to permit Buyer and Buyer's customers to use, sell, and re-sell the Goods, and, failure to do so shall entitle Buyer to a full refund of the purchase price of the Goods together with any costs to replace the Goods with non-infringing Goods.

(f) Buyer's rights under this Section 3 shall not be exclusive and Buyer retains and reserves all other rights and claims for damages, including, without limitation, consequential and incidental damages, provided by law. This Section 3 shall survive termination, cancellation or completion of delivery.

#### **4. Laws**

Seller represents, warrants and agrees that all Goods and Services covered by this purchase order will be produced and performed in compliance with all applicable statutes, rules, regulations and orders of Federal, state, and local governments or governmental authorities, including, without limitation, the Fair Labor Standards Act of 1958 and the Occupational Safety and Health Act of 1970.

#### **5. Inspection and Acceptance**

(a) All Goods covered by this order shall be received subject to Buyer's final inspection for acceptance or rejection, notwithstanding prior payment therefor, including any inspection during Buyer's production process. Seller will permit Buyer and Buyer's customers (including any government agency) access to the facilities where the Goods sold hereunder are manufactured, stored and tested and to all of Seller's records related thereto, and Buyer (and/or its customer) will be permitted to examine production and carry out tests and inspections at such facilities. In the event any Good is found to be defective, fails to meet Buyer's specifications or requirements or is otherwise nonconforming, Buyer may at its option, in addition to all other rights and remedies available to it under applicable law, return such Goods to Seller, at Seller's expense, for credit or replacement. Nothing herein shall release Seller from the obligation to make full and adequate testing and inspection of the Goods. All Goods and materials delivered by Seller shall be accompanied by a certification of compliance with all of Buyer's requirements and specifications.

(b) Buyer shall accept the Goods or Services or shall give Seller notice of rejection due to any defect or nonconformance within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.

#### **6. Material; Tools and Equipment**

Materials which Buyer makes available to Seller shall remain the Buyer's property and shall be stored by Seller separately from its own goods at no charge and clearly labelled and managed as property of Buyer. Seller may only use the materials for the purposes of providing Goods and Services to Buyer. If the value of the materials falls or they are lost, Seller shall hold harmless, defend and indemnify Buyer from and against damages or claims and pay compensation as stipulated in the relevant legislation. If a third party asserts claims with regard to the materials, Seller shall immediately notify Buyer in writing and, at its own cost, shall take all necessary action to defend Buyer's property rights.

Unless otherwise specified in the purchase order, all special tools, dies and equipment used in the manufacture of the Goods shall be furnished by and at the expense of Seller. Such tools, dies and equipment shall be kept by Seller in good condition and from time to time when necessary, shall be replaced by Seller without expense to Buyer. Buyer shall have the option, however, at any time to buy from Seller all, or any part, of such tools, dies and equipment or replacements thereof, at the book value thereof based upon cost less depreciation as shown in Seller's books or accounts for tax purposes or as shown in Seller's books or accounts for other purposes, whichever value is lower, and thereby become the owner, and be entitled to the possession of the same. Seller shall not encumber, sell or otherwise dispose of such tools, dies or equipment without Buyer's written consent. Changes in tools, dies and equipment due to Buyer's change in design or specification will be paid for by Buyer only if expressly authorized in a written "Change Order" issued by Buyer.

Tools, dies and equipment furnished to Seller by Buyer or purchased from Seller by Buyer to perform this purchase order shall remain the property of Buyer, but Seller shall bear the risk of loss of and damage to such property, normal wear and tear excepted. Such property shall at all times be properly housed and maintained by Seller, shall be deemed to be personally, shall be marked by Seller "Property of [Buyer]" using the name of the Buyer, shall not be commingled with the property of Seller or with that of a third person, shall not be moved from Seller's premises without Buyer's prior written approval, shall not be used in connection with work not ordered by Buyer, and shall, upon request of Buyer, be immediately delivered to Buyer by Seller F.O.B. cars or trucks at Seller's plant, properly packed and marked in accordance with the requirement of the carrier selected by Buyer to transport such property or shall, upon request of Buyer, be immediately delivered to Buyer by Seller at any location designated by Buyer, in which event Buyer shall pay to Seller the cost of delivering such property at such location. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.

#### **7. Subcontracting; Changes; Audits**

Seller requires the Buyer's prior written approval if it intends to use subcontractors, suppliers or third parties. Seller shall only use subcontractors, suppliers or third parties who provide adequate warranty for a technologically flawless and timely contractual performance. Regardless thereof, all obligations of Seller shall remain unchanged even if approval has been granted. Insofar as Seller uses subcontractors, suppliers or third parties of any kind to fulfill the contract or makes use of their products or services, Seller is liable to the same extent as if it had rendered performance itself.

Buyer may at any time make changes in this order, but if any such change would cause a delay in time for performance, or an increase in price, Seller shall notify Buyer immediately and such change shall be made only if authorized by a written change order accepted by Buyer.

If necessary, Buyer and its customers are entitled to perform inspections of Seller and its subcontractors, suppliers or third parties of any kind who are used by Seller to fulfill the contract, and to facilitate that Seller shall allow Buyer and its customers access to the relevant business premises if asked to do so. Seller shall ensure that the Buyer's right to perform inspections, and the duty to allow access to the relevant business premises, also applies to its subcontractors, suppliers and third parties.

#### **8. Prices; Payment**

(a) Buyer shall be obligated to pay only that price for the Goods or Services set forth in its purchase order or in any accepted change order (the "Price"). Any adjustment to the Price shall be ineffective unless specifically agreed to in writing by Buyer. The Price shall include all applicable sales and use taxes, delivery charges, duties, and custom fees.

(b) Except as otherwise provided in this order, all payments shall be net 60 days after final acceptance by Buyer of the Goods and/or Services provided. Except for taxes specified on Buyer's purchase order, Seller's price shall be inclusive of, and Seller shall be responsible for, all taxes with respect to the manufacture and sale of the Goods. All invoices shall identify the applicable purchase order number. Buyer may, at its discretion, pay on the following terms: 5% discount if paid within 14 days, 3% discount if paid within 30 days, all from date of receipt of invoice.

#### **9. Product Liability; Recall**

(a) Buyer shall supply Seller with any required user manual, installation, use and service instructions, warnings, material safety data sheets or other documentation necessary to make the Goods safe for installation, use, maintenance and service. Seller shall hold harmless, defend and indemnify Buyer, its successors and assigns and its customers from and against all claims, suits, actions and all damages, costs, and expenses (including, without limitation, all legal fees and expenses) resulting from any and all claims of bodily injury or property damage based on any product liability theory, including, without limitation, breach of contract or warranty, tort, negligence, strict liability or any statutory product liability theory, arising out of the purchase, use, sale or re-sale of the Goods or exposure to the Goods.

(b) In the event that Seller at any time becomes aware of any defect or condition affecting the safety of the Goods in application, storage or use, Seller shall immediately notify Buyer and shall provide a full description thereof.

(c) Buyer shall further hold harmless, defend and indemnify Buyer, its successors and assigns and its customers from and against all claims, suits, actions and all damages, costs, and expenses (including, without limitation, reasonable costs of inspection, removal, and replacement of the Goods and all legal fees and expenses) resulting from any recall, field or other replacement or service, repurchase or return of the Goods arising out any government required recall or any voluntary recall or service or replacement program initiated by Buyer or Seller relating to the Goods, regardless of whether or not a specific defect has been determined, acknowledged, demonstrated or proven.

(d) Seller shall cooperate with and assist Buyer in responding to any inquiry, investigation, or proceeding initiated by any individual, entity, or governmental agency relating to any alleged product defect, including, without limitation, providing Seller, immediately upon Buyer's request, with the identities of any upstream supplier or manufacturer of the Goods, together with identification of the formulae, ingredients, composition, makeup, and components of the Goods.

#### **10. Shipping; Delivery; Deviation; Traceability, Customs, Export Controls**

(a) Seller shall be responsible for proper packaging sufficient to assure that the Goods arrive at Buyer's destination without loss or damage. Seller bears the risk of loss or damage to Goods in transit. Unless otherwise specified, Seller will use the most reasonable and economic shipment method available. All communications and documents related to the shipment shall include the Buyer's purchase order number. Seller shall be responsible for preparing all shipping documents, including packing lists and bills of lading, and transmitting such documents to Buyer. Shipping documents shall include Buyer's purchase order number, identification of the manufacturer of the Goods, number of units shipped, lot, batch or date code, if applicable, country of origin, and customs tariff number. Shipment shall be made to the Buyer's physical address shown on the purchase order unless a different address is specified. Quality assurance documents, applicable material safety data sheets, and material certifications required by the purchase order should be transmitted to Buyer electronically no later than the date the shipment leaves Seller's facility. Seller shall notify Buyer as to the identity of the carrier and the identity of any freight forwarder used at the time of shipment. Seller shall be liable for any damages, costs or expenses incurred by Buyer as a result of any failure by Seller to comply with the foregoing provisions, including, without limitation, delay, diversion, repackaging, loading, quarantine, impoundment, demurrage, shunting, transfer, and storage costs.

(b) Seller shall deliver only the precise type, quantity and quality of Goods or Services specified in Buyer's purchase order. In the event of any anticipated deviation from Buyer's specifications, Seller shall notify Buyer prior to shipment or delivery and Buyer may acknowledge and accept such deviating performance or may cancel its purchase order or refuse delivery at Buyer's sole discretion. Acceptance by Buyer of any such incomplete or deviating performance shall not be effective unless made in writing. The time (or times, if delivery is to be in installments), method and place specified in Buyer's purchase order for shipment or delivery are of the essence. All shipment shall be FCA named point of delivery Incoterms 2010.

(c) Seller warrants that it has good title in the Goods, free and clear of any security interest, lien or encumbrance as of the time of Shipment to Buyer.

(d) Seller warrants that it will trace and maintain records regarding the source and lot number of each Good and to keep such records for at least fifteen years from delivery.

#### Customs

Seller shall ensure that the documents accompanying the consignment contain all data relevant to foreign trade and all relevant data, information and documents for the correct and complete lodging of a customs declaration. This refers especially to the subsequent data and information:

- Value (including currency)
- Customs Tariff Number
- Country of Origin
- Weight
- Commercial Description of Merchandise
- Incoterm (including named place)

Seller shall be fully liable for all damages, costs and expenses arising from incorrect or incomplete information and data on accompanying shipping documents.

Seller is responsible for the correct exportation of Goods & Services from its customs territory and shall comply with all associated legal obligations. All fees and charges incurred in connection with the export from Seller's customs territory shall be borne by Seller.

Unless agreed otherwise, Buyer bears the responsibility for correct import customs clearance in the country of destination and pays relevant import duties and taxes.

For cross-border shipments between countries or groups of countries having a free trade agreement/preferential trade agreement in place, Seller shall ensure to issue and enclose a relevant proof of preferential origin to enable Buyer to make use of the free trade/preferential trade agreement.

Seller shall ensure to comply with the applicable regulations of the trade agreements. If Seller cannot provide a plausible justification that the issuance of a proof of preferential origin was not possible according to the rules of the free trade/preferential trade agreement, Buyer retains the right to charge relevant duties that have been assessed due to missing or faulty proof of preferential origin to Seller.

### Export Controls

Seller undertakes to inform Buyer separately in writing if provided Goods or Services (including Software and Technology) are subject to export controls according to EU- US- or the national export control laws of the exporting country and included in export control lists (e.g. common list of military/defense related products of the EU, Annex I to EC Dual Use Regulation No. 428/2009, US-Munitions List, US-Commerce Control List). Seller shall inform Buyer immediately in case of any changes regarding licensing requirements of provided Goods or Services based on technical or legal changes, or based on official decisions.

Seller undertakes to comply with all applicable export control regulations applicable to all contractual deliveries and/ or services as well as their export and/ or re-export. In addition, Seller undertakes to comply with all EU- and US- sanctions regulations and to check its business partners and sellers against current UN-, EU- and US- sanctions lists.

Any violation of these export control provisions shall entitle Buyer to immediately terminate all existing contracts with Seller due to significant grounds.

Moreover, if Seller is listed on an EU or US sanctions list, Buyer reserves the right to terminate all business relations, payment flows and performance with immediate effect. Furthermore, in the event of infringement of any of these compliance provisions, Seller shall comprehensively hold harmless, defend and indemnify Buyer from and against any and all resulting damages and claims.

### **11. Cancellation**

In addition to other rights of cancellation set forth in these Terms, Buyer may at any time cancel or suspend this order, or any part thereof, without cause, by giving five days written notice to Seller specifying the effective date and the extent of such cancellation or suspension. Upon receipt of such notice, Seller will, to the extent directed by Buyer, immediately terminate all work on Buyer's purchase order and any contracts thereunder and take all actions reasonably designed to reduce its costs in connection with the work ordered hereunder. Buyer may cancel for cause in the event that Seller is the subject of a voluntary or involuntary petition in bankruptcy, Seller becomes insolvent or the subject of a receivership, or Seller makes an assignment for the benefit of creditors. If Buyer cancels this purchase order without cause, Buyer shall reimburse Seller for Seller's reasonable expenses which are properly allocable to and result from such cancellation as determined according to generally accepted accounting practices. The amount of such reimbursement shall in no event exceed an amount equal to that part of the contract price allocable to the part of this purchase order which is cancelled.

### **12. Insecurity**

If because of Seller's financial condition or for any other reason Buyer determines that there are reasonable grounds for insecurity in respect of Seller's performance hereunder, Buyer shall so notify Seller in writing. If within the time specified in such notice, Seller has not provided Buyer assurance acceptable to Buyer of Seller's willingness and ability to render such performance, Seller shall be deemed to be in default hereunder and Buyer may, in addition to all other remedies available to it, cancel its purchase order or any unexecuted portion thereof.

### **13. Risk of Loss**

Damage or loss to the Goods shall be at Seller's risk until such Goods are received by Buyer from the last carrier or shipper, unless otherwise acknowledged in writing by Buyer.

#### **14. Design Rights**

Buyer shall at all times have and retain title to all designs, drawings and specifications furnished by Buyer to Seller and intended for use with the purchase order. Seller agrees to use such designs, drawings and specifications only in connection with this order, to keep them confidential, and to not disclose the same to any other person, firm or corporation, except government inspectors, without obtaining the prior written consent of Buyer.

#### **15. Services**

If Seller is to perform Services for Buyer, Seller agrees to defend, indemnify and save Buyer harmless from any and all liabilities, costs, expenses (including reasonable attorneys' fees), claims, suits, actions, proceedings and losses arising from or out of the performance by Seller of such Services.

#### **16. Insurance**

Seller shall maintain insurance as follows:

(a) Commercial General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when Services are performed and/or until final acceptance of the Goods by Buyer, Commercial General Liability insurance with available limits of not less than \$2,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph a herein), Stop Gap and/or Employee Liability coverage and Goods and completed-operations insurance with limits of not less than \$1,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage. If requested, Seller shall name Buyer as an additional insured under such insurance.

(b) Automobile Liability. If licensed vehicles will be used in connection with the performance of Services, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(c) Product Liability. If Seller is supplying Goods, Seller shall carry and maintain product liability insurance with minimum limits of \$2,000,000 in the aggregate and \$1,000,000 per occurrence. Seller shall name Buyer as an additional insured under such insurance.

(d) Workers' Compensation and Employers' Liability. Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.

(e) Seller shall, upon request, provide Buyer with certificate(s) of insurance evidencing Seller's compliance with the insurance requirements of this Section. Seller, on its own behalf, and on behalf of any of its insurers, hereby waives all rights of subrogation against Buyer, its parent, subsidiary or affiliated companies, successors and assigns. Seller agrees that the existence of available and/or collectible insurance does not in any way limit or relieve Seller from its duties, liabilities or obligations under these Terms or the parties' contract.

(f) All policies of insurance required by this Section 16 shall be primary, non-contributory, and shall provide that the coverage thereunder shall not be terminated without at least thirty (30) days prior written notice to Buyer.

## **17. Confidentiality**

(a) Any non-public, confidential or proprietary information of Buyer or affiliates of Buyer that Seller becomes aware as part of the contractual relationship shall be deemed "Confidential Information", whether or not so marked at the time of disclosure and regardless of the form in which such information is disclosed. Confidential Information includes, without limitation, business or financial information drawings, specifications, prototypes, samples, plans, designs, patterns, know how, formulae, composition, ingredients, software, source code, market and marketing information and strategy, application and use of the Goods by Buyer, Buyer's payment method and source of funds, customer information, and trade secrets of Buyer and affiliates of Miba AG. Confidential Information shall be kept confidential at all times and access to Confidential Information shall only be furnished to employees who are directly entrusted with the execution of the order and whose knowledge of the Confidential Information is essential for the execution of the contract and who are bound by a prior written non-disclosure agreement. Confidential Information shall not be disclosed in any way or form to unauthorized employees or any third party, including, among others, Buyer's competitors or customers, Seller's sub-contractors, affiliates, vendors and suppliers, without the express written permission of Buyer. Seller shall ensure that all documents and materials which might contain Confidential Information of Buyer are safeguarded and protected against access by third parties and unauthorized employees. Buyer's Confidential Information shall at all times remain the property of Buyer and disclosure to Seller does not relinquish, transfer or convey to Seller any right to such information, including any intellectual property right. Buyer makes no express or implied warranty as to the accuracy of the Confidential Information, which is disclosed to Seller on an "as-is" basis. Any Confidential Information disclosed to Seller shall not be copied in any way and shall be used solely by Seller and solely for the purpose of the transaction contemplated by Buyer's purchase order and for no other purpose. Buyer shall not attempt to obtain any findings or draw any conclusions from the Confidential Information, nor trace back to the information which underlies it, nor to analyze it through observation, assessment, reverse-engineering or testing.

(b) Buyer's purchase order and Seller's fulfillment thereof shall be deemed confidential. Seller shall not publish or disclose to any third party any information relating to the transaction, except as needed to comply with tax and accounting requirements, and then to the least possible degree. Seller shall not use Buyer's name, trademarks, or logos in its advertising or marketing in any way without Buyer's express written permission.

(c) At any time upon request of Buyer, or at such time as Seller's performance of the purchase order has been completed, Seller shall immediately return to Buyer all Confidential Information disclosed. At such time, if Confidential Information has been disclosed in electronic form or by electronic mail, Seller shall delete such information from its computer systems and servers, together with any back-up copies thereof, and shall certify such deletion to Buyer in writing.

(d) Buyer shall be entitled to damages and injunctive relief for any violation of this Section 17. This Section 17 shall survive the later of cancellation or Seller's completion of performance for a period of five (5) years.

## **18. Intellectual Property**

(a) The provision of information by Buyer or the purchase of Goods from Seller does not confer upon Seller any right, permission or license of any nature in Buyer's intellectual property or the intellectual property of affiliates of Buyer. No rights in, or license to, Buyer's intellectual property including, without limitation, Buyer's patents, trademarks, copyrights, industrial designs, technology, know how, or trade secrets, are conveyed, transferred or granted upon the Seller absent an express written agreement of the Buyer or as otherwise stated in this Section 18, provided, however that Seller shall have a limited, non-exclusive, temporary license to utilize such intellectual property for the purpose of manufacturing the Goods covered by this purchase order and for no other purpose, which limited license shall terminate upon the completion of such manufacture.

(b) Goods Based Upon Buyer's Specifications. If the Goods are based upon Buyer's designs, specifications, plans or drawings ("Buyer Designed Goods"), nothing in these Terms or elsewhere should be construed as Buyer's consent to Seller's modification or redesign of the Goods for sale to a third party and Seller agrees that it will not attempt, or assist any third party in attempting, to copy, remanufacture, alter, imitate, mimic, or reverse engineer the Goods or sell the finished Goods to any third party. Seller grants Buyer the right to use Buyer Designed Goods for any application and purpose. The provisions relating to confidentiality in these Terms shall apply to Buyer's designs, specifications, plans or drawings. All intellectual property rights including, without limitation, patent, copyright, trademark and trade dress rights, relating to Buyer Designed Goods or any modification or improvement thereof by Buyer or Seller, shall vest in and be the property of Buyer and Seller shall, upon request of Buyer, execute and deliver to Buyer all documents required by Buyer to perfect such rights.

(c) Seller Improvements. Absent separate written agreement, the Seller agrees that all intellectual property rights, including exploitation and use rights, in and to know how, technology, discoveries, findings, developments, improvements and inventions which arise out of or in connection with the Seller's performance and which relate to the Goods, whether or not Goods are supplied on the basis of the Seller's specifications or other contribution of the Seller thereto, shall immediately vest in and become the property of the Buyer and shall automatically pass to the Buyer, so that the Buyer becomes the sole and exclusive rights-holder and beneficial owner thereof. Seller shall obtain and provide to Buyer all necessary documentation transferring such rights from any of Seller's employee's agents, subcontractors or others to Buyer.

(d) Buyer Improvements. Unless otherwise set forth in a separate, written agreement, the Seller agrees that Buyer is entitled to any and all intellectual property rights and exploitation rights in the Goods that arise out of Buyer's examination, testing, modification, redesign and/or use of the Goods, including the rights to any and all improvements of the Goods, and Seller agrees that all such rights will vest in Buyer automatically to the fullest extent allowed under applicable law and that Seller will not perform any acts contrary to, or hostile to, Buyer's rights. Pursuant to this subsection (d), the Seller agrees to perform any acts required by Buyer under applicable law to register or record any assignment of such rights to Buyer. However, in such event, the Buyer shall bear the costs of any fees or expenses necessary to secure the Buyer's intellectual property rights or exploitation rights that arise under the terms of this subsection and the Seller hereby grants the Buyer a non-exclusive, non-transferable license to such intellectual property rights or exploitation rights, but only as applicable to the Goods covered by this subsection.

(e) Joint Development. To the extent that the Goods shall be the result of the parties' joint development, design, fabrication, and testing, the parties shall enter into a separate Joint Development Agreement addressing the right of each party to the intellectual property and utilization rights of such Goods.

#### **19. Buyer's Marks**

Seller shall place Buyer's name, logo(s), and identification on the Goods only if and only as specified in the purchase order or in accordance with approvals given in writing by Buyer. If Buyer specifies the placement of a third party's name, logo(s) or identification on the Goods, Buyer warrants that it has obtained the written authorization, permission or direction of such third party to do so.

#### **20. Miba Code of Conduct**

Seller shall comply with the Miba Code of Conduct found on the internet at:

<http://www.miba.com/en/coc/>

the provisions of which are incorporated herein by reference and made part of the parties' contract. Seller acknowledges that it has reviewed Miba's Code of Conduct, that Seller's employees, subcontractors and suppliers are required to follow such Code, and to avoid any violation thereof, and that Seller will immediately report to Buyer any action by any employee, subcontractor or supplier of Seller which constitutes a violation of or attempt to violate such Code of Conduct. Seller shall cooperate with any request by Buyer to provide information and documentation regarding any violation or attempted violation of Miba's Code of Conduct. Violation by Seller of Miba's Code of Conduct shall be cause for cancellation, termination or rescission of the Buyer's purchase order or the parties' contract.

#### **21. Remedies, Modification and Waiver**

Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims, suit, losses, liabilities, costs and expenses (including Buyer's costs of investigation, testing and inspection and attorney's fees and including consequential and incidental damages) caused by any breach by Seller of any representation, warranty, or covenant herein, or arising out of any act or omission of Seller or arising from or related to any Goods or Services provided by Seller to Buyer or Buyer's customers. In no event shall Buyer be liable for consequential or incidental damages. Remedies herein provided shall be cumulative and additional to any other remedies provided under applicable law. No modification or waiver of any provision hereof shall be binding upon Buyer unless contained in a writing signed by an officer of Buyer. A waiver of any right or obligation set forth herein on one occasion shall not be deemed a waiver of any other right or obligation or of the same right or obligation on any other occasion.

#### **22. Delegation; Assignment**

Seller shall not delegate its performance hereunder to subcontractors, suppliers or third parties or assign its right to any payment not yet earned without Buyer's written consent, which consent shall be granted in Buyer's sole discretion.



Seller shall require all of its subcontractors and suppliers to comply with these Terms. Delegation of performance by Seller shall not relieve Seller of its obligations under the parties' contract or these Terms. Buyer may assign its rights under the parties' contract to a subsidiary or affiliate of Miba AG or other affiliate of Buyer.

### **23. Governing Law; Venue and Jurisdiction; Compliance with Law**

(a) If all parties hereto have their registered office within the United States of America, the validity, construction and effect of the provisions of Buyer's purchase order, and the purchase and sale herein contemplated, shall be governed by and construed and interpreted according to the laws of the state of Buyer's location as shown on the purchase order (the "Forum State"). In all other cases, the validity, construction and effect of the provisions of Buyer's purchase order, and the purchase and sale herein contemplated, shall be governed by and construed and interpreted according to the laws of Austria. In any case, the parties hereto agree that the United Nations Conventions on Contracts for the International Sale of Goods and any conflict of law rules shall not apply to this contract.

(b) If all parties hereto have their registered office within the United States of America, any legal suit, action or proceeding arising out of or relating to Buyer's purchase order, Seller's performance, or these Terms shall be instituted in the United States District Court or the competent State Court nearest Buyer's location in the Forum State and each party irrevocably consents and submits to the exclusive personal and subject matter jurisdiction of such courts in any such suit, action or proceeding and expressly waives any objection thereto. In all other cases, the exclusive place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, Buyer is also entitled, at its own discretion, to assert claims against Seller before the court with subject-matter jurisdiction for Seller's registered office.

(c) By accepting this order, Seller agrees to comply with all provisions of the Code of Federal Regulations, including, without limitation, the regulations found at (41 CFR, Chapter 60) Executive Order 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. Without limiting the generality of the foregoing, the contract provisions set forth in Section 202 of Executive Order 11246 (equal opportunity), as amended, and the regulations promulgated thereunder (41 CFR Part 60-1), and the provisions, representations or agreements contained in Executive Order 11701 (employment of veterans), as amended and the regulations promulgated thereunder (41 CFR Part 60-250 and 41 CFR Part 61-250), Executive Order 11758 (employment of the handicapped), as amended, and the regulations promulgated thereunder (41 CFR Part 60-741) and Executive Order 11625 (utilization of minority business enterprises) as amended, and the regulations promulgated thereunder (41 CFR Chapter 1-1-1310) to the extent same are applicable to Buyer's order, are incorporated by reference herein as if fully rewritten with respect thereto. Seller agrees, upon request, to furnish Buyer a certification of compliance with such Executive Orders in such form as Buyer may require. Further, Seller agrees to comply with all provisions and requirements of U.S. law relating to importation and exportation or re-exportation of goods or data including, without limitation, the requirements of 22 CFR Parts 120-130 (International Trafficking in Arms Regulations (ITAR)) and of 22 CFR Part 700-799 (Export Administration Regulations (EAR)) and will hold harmless, defend and indemnify Buyer from and against any and all costs, expenses, and damages (including Buyer's attorneys' fees) incurred by Buyer, and any fines, penalties assessed or awarded against Buyer, and any claims, actions, suits, charges, or proceedings filed against Buyer as a result of Seller's violation of such laws or regulations. Seller agrees to comply with Buyer's requirements relating to the reporting of content of the Goods pursuant to Section 1502 of the Dodd-Frank Act (Conflict Minerals), as amended, and regulations adopted thereunder.

(d) If Seller receives or obtains personal data or identifiers from, for or on behalf of Buyer, it shall comply with applicable state and U.S. privacy or other laws relating to the protection, handling, and storage thereof. Where applicable, Seller shall comply with Austria's Data Protection Act [DSG] (as amended) and the EU General Data Protection Regulation, and, where necessary, enter into a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Where required by applicable law, Seller shall utilize the contract templates issued by the European Commission to provide a suitable guarantee as defined in Art. 46 Paragraph 2 lit c and d of the General Data Protection Regulation. Seller shall indemnify, defend and hold harmless Buyer with respect to any claim against Buyer arising out of or related to Seller's failure to comply with applicable privacy laws or regulations. Seller shall provide Buyer with immediate notice of any breach of Seller's computer network, system, servers, or data that results in the copying, theft, ransom, disruption, corruption, or lack of access to Buyer's Confidential Information or other data disclosed or provided by Buyer or that otherwise involves or effects the purchase order and the purchase and sale herein contemplated. Seller represents that it has in place reasonable protections and security measures against cyber-attack, intrusion, and infiltration.

## Provisions Applicable to Orders Placed under Government Contract

**(a)** This Purchase Order is subject to the terms and conditions of Federal Acquisition Regulation ("FAR") and Department of Defense FAR Supplement ("DFAR") and all clauses and provisions in full text or incorporated by reference herein. The FAR and DFAR clauses referenced below and throughout this Purchase Order are modified to the extent indicated, and are incorporated herein by reference with the same force and effect as though set forth at length.

**(b)** Where appropriate to accomplish the purposes of the FAR and DFAR and thereby creating a legal relationship between Buyer and Seller similar or identical to but not dependent on those intended to be created by said regulations between the Government and "a Contractor," the following changes are applicable to all the referenced FAR and DFAR clauses in this Subcontract.

(1) The term "Contract" means this "Purchase Order;"

(2) The term "Subcontract" or "Subcontractor" means "Lower Tier Purchase Order" or "Lower Tier Seller;"

(3) The term "Contractor" means "Seller;"

(4) The term "Contracting Officer" means the Buyer's duly authorized contractual representative unless otherwise indicated; and

(5) The term "Government" means "Buyer" unless otherwise indicated.

**(c)** The changes set forth in Section (b) above shall not apply (1) in the phrases "Government Property", "Government-Owned Property", "Government Equipment" and "Government-Owned Equipment"; (2) when a right, act, authorization or obligation can be granted or performed only by the Government or the Agency Contracting Officer or his duly authorized representative; (3) when title to or rights in property or data rights is to be transferred to the Government; (4) where specifically modified as noted below, and (5) wherever the clauses set forth below explicitly state that the meaning shall remain unchanged in subcontracts issued under the Government Prime Contract.

**(d)** The FAR and DFAR clauses incorporated herein are those in effect on the dates specified in this Purchase Order, or if no date is specified, those in effect on the effective date of this Purchase Order.

**(e)** This Purchase Order incorporates the following FAR and DFAR clauses by reference: **FAR Clauses:**

52.203-3 Gratuities (APR 1984)

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)

52.203-7 Anti-Kickback Procedures (JUL 1995)

52.211-15 Defense Priority and Allocation Requirements (SEP 1990)

52.219-8 Utilization of Small, Business Concerns (May 2004)

52.219-9 Small Business Subcontracting Plan (JAN 2002)

52.222-21 Prohibition of Segregated Facilities (FEB 1999)

52.222-26 Equal Opportunity (APR 2002)

- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans, Vietnam Era, and Other Eligible Veterans (DEC 2001)
- 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- 52.225-8 Duty-Free Entry (FEB 2000)
- 52.225-13 Restriction on Certain Foreign Purchases (DEC 2003)
- 52.227-1 Authorization and Consent (JUL 1995)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
- 52.244-6 Subcontracts for Commercial Items (JUL 2004)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

**DFARS Clauses:**

- 252.225-7001 Buy American Act and Balance of Payments Program (APR 2003)
- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241) (By accepting this Purchase Order, Seller certifies that all delivered items are domestic end products as defined by this DFAR clause)
- 252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises (OCT 2003)
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (MAR 2000)
- 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631)
- 252.247-7024.1 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631)