

## TERMS AND CONDITIONS OF PURCHASE

### 1. Agreement/Acceptance

1.1 As used in these Terms and Conditions of Purchase, (a) "Agreement" means the collective terms and conditions described in Section 1.2, (b) "McInnes" means McInnes Rolled Rings, dba of TSK Partners, Inc. making the purchase as identified on the purchase order or separate written agreement, (c) "Seller" means the seller of the Products or Services, (d) "Products" means the products that are the subject of the purchase by McInnes, and (e) "Services" means the services that are the subject of the purchase by McInnes.

1.2 The terms and conditions that apply to and govern the purchase of Products and Services by McInnes from Seller are exclusively limited to (a) the terms and conditions contained in McInnes's purchase order and any subsequent releases and/or a separate written agreement signed by an authorized representative of McInnes, together with any documents incorporated in any of the foregoing, such as a statement of work, and (b) these Terms and Conditions of Purchase, whether or not they are specifically referenced in or incorporated by the forms exchanged by McInnes and Seller or in the separate written agreement entered into between McInnes and Seller. Any conflict between these Terms and Conditions of Purchase and the documents specified in (a) will be resolved in favor of the documents specified in (a).

1.3 McInnes objects to terms and conditions that are additional to or different from those contained in the Agreement, and no additional or different term will be part of the Agreement unless expressly made so in a writing signed by an authorized representative of McInnes. The preceding sentence excludes from the Agreement, among other things, any additional or different terms and conditions of Seller appearing on or referenced in Seller's quotation, acknowledgement, invoice or other similar document, Seller's terms and conditions of sale and Seller's web site or customer e-commerce site.

1.4 Seller will be deemed to have accepted the Agreement if Seller (a) acknowledges McInnes's purchase order, assents to the Agreement in writing or clicks an "accept" or similar button on an electronic site, (b) commences work on, delivers or performs any of the Products or Services, (c) accepts any portion of the payment for the Products or Services, or (d) takes any other action evidencing Seller's acceptance of the benefits of any part of the Agreement.

1.5 No modification of the Agreement or waiver of any of its terms will be binding on McInnes unless clearly expressed in a writing that both (a) states that it is a modification or waiver of the Agreement, and (b) is signed by an authorized representative of McInnes. Any purported modification or waiver by oral agreement, course of performance or usage of trade is invalid and ineffective.

### 2. Delivery

2.1 Delivery terms are as stated in the Agreement, or, if none are so stated, Delivered Duty Paid (DDP) the designated McInnes facility. Delivery terms are governed by Incoterms 2010.

2.2 Seller shall deliver all Products and Services on the dates specified by McInnes, and meet all of McInnes's required service levels. Time is of the essence for purposes of Seller's delivery of Products and Services to McInnes. McInnes may reject any Products or Services not delivered on time (whether early or late) and return such Products and Services at Seller's risk and expense. Seller may not withhold delivery for any reason without the prior written consent of McInnes.

2.3 Seller shall deliver all Products and Services in the quantities specified by McInnes in a purchase order. Forecast quantities are estimates for reference only and do not constitute binding commitments by McInnes to purchase. Quantities delivered in excess of ordered quantities may be returned at Seller's risk and expense.

2.4 Risk of loss and damage to the Products remains with Seller until the Products have been delivered to the designated McInnes facility in accordance with the delivery terms. Notwithstanding the preceding sentence, if the Products are received by the designated McInnes facility on consignment, (a) risk of loss and damage to the Products, and responsibility for insuring the Products against loss and damage, remains with Seller until the time at which McInnes either resells the Products or uses the Products in production (referred to as the "end of the

consignment period”), (b) title to the Products remains with Seller, and McInnes has an absolute right to return the Products, up to the end of the consignment period, and (c) title to the Products passes to McInnes at the end of the consignment period.

2.5 If Seller has reason to believe that a delivery of Products or the performance of Services may not be made within the time required by the Agreement, or if an actual delay has occurred, Seller shall promptly send written notice to McInnes, stating the cause and expected duration of the delay. During the period of any delay, Seller shall at its sole cost and expense take all steps as are necessary or desirable to mitigate the effects of the delay on McInnes and minimize disruption of supply to McInnes, including treating McInnes no less favorably than any of its other customers if Seller is required to allocate goods or resources among its customers. If there is an anticipated or actual delay, or a threat by Seller to suspend delivery for any reason, McInnes may, in addition to all other remedies available to it, take one or a combination of the following actions: (a) direct Seller to ship, at Seller’s sole cost and expense, Products using an expedited method of transportation such as express air freight, (b) acquire substitute Products or Services from other sources, in which case Seller shall reimburse McInnes for any additional costs and expenses, including incidental costs of cover, and (c) cancel or reduce the quantities under the Agreement. McInnes will have no liability to Seller with respect to the cancelled or reduced quantities.

### **3. Packaging and Shipping**

3.1 Seller shall properly pack, mark, ship and route the Products in accordance with the requirements of McInnes and the carriers and in accordance with all applicable laws and regulations, or if there are no stated requirements, in accordance with best commercial practices designed to prevent loss or damage due to weather, transportation and other causes.

3.2 With each shipment, Seller shall include packing slips identifying McInnes’s complete purchase order number, shipment date, an itemized list of contents using the classification identification of the Products required by McInnes or the carrier, and such other items as McInnes may require. The markings on each package and shipping document must be such that McInnes can easily identify the Products. McInnes’s count or weight will be final and conclusive for any shipment. Seller is responsible for all demurrage charges and other expenses incurred as a result of Seller’s failure to promptly send McInnes the notice of shipment on the shipping date.

### **4. Prices and Payment**

4.1 Prices for the Products and Services are as set forth in the Agreement. The price as so determined is the sole amount payable by McInnes to Seller or any third party for the purchase of the Products or Services, and Seller shall be solely responsible for, among other things, (a) costs of raw materials, supplies or manufacture, (b) duties or similar charges, (c) insurance premiums, (d) salaries or benefits of employees, or (e) handling, packaging, shipping or storage costs. No increases or surcharges to pricing will be effective without McInnes’s prior written consent.

4.2 The price includes all applicable federal, state, provincial and local taxes other than sales or value added taxes. Seller shall issue invoices for any sales or value added taxes that Seller is required by law to collect from McInnes, in a form sufficient to permit McInnes to make appropriate deductions for income tax purposes. Seller shall provide McInnes with all information and documentation required under local law to enable McInnes to recover any sales, value added or similar turnover taxes.

4.3 Seller may not send invoices earlier than the date of receipt at McInnes’s facility of Products or completion of Services or, in the case of consignment, the end of the consignment period as defined in Section 2.4. All invoices must include McInnes’s complete purchase order number and have all necessary or required bills of lading and other shipping receipts and documents attached.

4.4 Payment terms in respect of undisputed invoices are as stated in the Agreement, or, if none are so stated, net 45 days. Any payment or discount period will be calculated from the date of receipt by McInnes of an accurate and properly prepared invoice (including all required supporting documents).

4.5 In addition to any right of setoff or recoupment provided by law or equity, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates to McInnes and its affiliates, and McInnes shall have the right to set off against or to recoup from any amounts due to Seller and its affiliates from McInnes and its affiliates.

## **5. Changes**

5.1 McInnes may require Seller to implement changes to the specifications, design, quantities and delivery schedules of the Products, the description, specifications, amount and scheduling of the Services, and other requirements under the Agreement. Seller shall promptly implement such changes. Seller shall make its claim, if any, for equitable adjustment of the price or delivery schedules resulting from such changes in writing to McInnes within 5 business days after receiving McInnes's instructions to implement the changes, failing which Seller will be deemed to have waived, and McInnes will have no liability for, any such claims. McInnes will equitably determine any adjustment in price or delivery schedules resulting from such changes. To assist in McInnes's determination of any equitable adjustment in price or delivery schedules, Seller shall, upon McInnes's request, promptly provide additional information to McInnes, including documentation of changes in Seller's cost of production and the time to implement such changes. McInnes and Seller will work to resolve any disagreement over the adjustment, but throughout the resolution process and thereafter, Seller shall continue performing under the Agreement, including the manufacture and delivery of Products, the performance of Services and the prompt implementation of the required changes.

## **6. Property of McInnes**

6.1 "McInnes Property" includes any tooling, gauging, equipment, patterns, McInnes Material or other property that McInnes directly or indirectly furnishes to or purchases from Seller, or for which McInnes directly or indirectly gives reimbursement to Seller. "McInnes Material" means any raw materials, components, supplies or other materials provided by McInnes to be used by Seller in manufacturing the Products or performing the Services, and includes any scrap generated from operations on such materials (but excludes material which is the subject of an actual invoiced sale from McInnes to Seller and for which Seller has actually paid).

6.2 McInnes Property is and will remain the property of McInnes, and will be held by Seller on a bailment basis. Seller waives any lien or other rights that Seller might otherwise have with respect to any item of McInnes Property, for work performed on or utilizing such property or otherwise.

6.3 While McInnes Property is in Seller's possession or control (including while in the possession of Seller's agents and subcontractors), Seller bears the risk of loss, theft, damage and destruction to McInnes Property and will be responsible for the cost of repairing or replacing any McInnes Property that is lost, stolen, damaged or destroyed. Seller shall maintain insurance sufficient to cover such risks. Without limiting the generality of the foregoing, Seller shall replace, by purchasing from McInnes at McInnes's then current prices, any McInnes Material lost or damaged through spoilage, breakage, defective workmanship of Seller, or any other reason.

6.4 Seller shall use the McInnes Property only for the purpose of fulfilling its obligations under the Agreement, and in compliance with McInnes's and the manufacturer's instructions. Seller shall not sell or offer to sell to any third party any products made with McInnes Property, except with McInnes's prior written consent.

6.5 Seller shall regularly inspect the McInnes Property and maintain it in good condition, working order and repair, at no additional cost to McInnes, and conspicuously mark the McInnes Property as being the property of McInnes. Seller shall not (a) commingle the McInnes Property with the property of Seller or of any third person, (b) move the McInnes Property from Seller's facility to which the property was originally delivered, or provide or furnish the McInnes Property to any third party, (c) sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of the McInnes Property, (d) assert or allow any person claiming an interest through Seller to assert any lien (including a mechanics' or suppliers' lien) or claim of ownership in the McInnes Property, or (e) regard the McInnes Property or allow the McInnes Property to be regarded as real property or fixtures.

6.6 McInnes may make public filings (including UCC-1 filings) to provide notice of McInnes's ownership of the McInnes Property, and Seller shall cooperate with McInnes in connection with such filings.

6.7 McInnes makes no express or implied warranty or representation as to the fitness (generally or for any particular purpose), condition, merchantability, design or operation of any item of McInnes Property. McInnes will not

be liable to Seller for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by the McInnes Property or use of the McInnes Property.

6.8 Upon McInnes's request, Seller shall promptly release or deliver the McInnes Property to McInnes at no charge to McInnes, failing which McInnes may enter Seller's premises upon reasonable notice and take possession of the McInnes Property.

## **7. Quality**

7.1 In performing its obligations hereunder, Seller must obtain McInnes' written consent prior to (a) process changes which affect the fit, form or function of the Product, (b) change of the location of manufacture of any Products or the provision of any Services, (b) substitution of material or alter the physical or chemical properties, except in accordance with applicable McInnes specifications, or (c) otherwise change the materials, or sub-suppliers used in the manufacture of any Products.

7.2 Seller shall not subcontract its obligations under the Agreement. Any attempted subcontract will be void, unless McInnes has given its prior written consent to such subcontract. In any event, Seller shall remain liable for in respect of all subcontracted obligations.

7.3 Seller must maintain production records and quality records associated with this purchase order for a minimum period of 50 years unless otherwise specified on the McInnes purchase order or Seller requests and receives written approval from McInnes to dispose of such records.

7.4 Seller must provide unique identification of product batches / lots as required by McInnes.

7.5 While performing any Services at McInnes's facilities, Seller shall comply with McInnes's rules and policies, including any environmental, health and safety rules and policies.

7.6 Seller must implement a quality management system, use customer-designated or approved providers including process services (e.g., special processes) and prevent the use of counterfeit material or parts.

7.7 Seller must flow down to external providers applicable requirements including customer requirements, ensure that persons are aware of their contribution to product conformity, their contribution to product safety and the importance of ethical behavior.

## **8. Right to Inspect and Audit**

8.1 Seller will permit McInnes and its representatives, consultants and customers, and regulatory, to enter Seller's facilities at reasonable times to inspect the facilities and applicable records involved with this order, the McInnes Property and Seller's records with respect thereto, and to inspect and test any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller's performance of the Agreement. Seller shall cooperate in any such inspection. No such inspection will constitute acceptance by McInnes of any work-in-process or finished goods.

## **9. Non-conforming Products and Services**

9.1 McInnes may, but is not required to, inspect the Products upon arrival at the designated McInnes facility, and the Services upon completion.

9.2 If McInnes reasonably suspects non-conformance from its inspection of Products prior to acceptance, and if the Products are needed by McInnes for urgent production, Seller shall promptly dispatch a rapid inspection team to the location where the Products are stored to inspect the Products to verify the non-conformance, or procure the services of a third party inspection service to perform such inspection to verify the non-conformance, with the cost of such service to be borne by Seller.

9.3 If McInnes rejects, on any reasonable basis, any Products or Services as non-conforming, McInnes may take one or a combination of the following actions: (a) reduce the quantity of Product and Services ordered under the

Agreement by the quantity of nonconforming Products and Services, and have Seller promptly issue a refund or credit to McInnes for the purchase price associated with the reduced quantity (or, if Seller does not do so, to debit Seller for the same amount), (b) require Seller to repair, replace or re-perform the non-conforming Products and Services, and (c) accept the non-conforming Products or Services and have Seller promptly reduce the purchase price by or issue a credit or refund in an amount McInnes reasonably determines to be the amount by which the value of the non-conforming Products or Services has been diminished (or, if Seller does not do so, to debit Seller for the same amount). Seller shall promptly pay or reimburse McInnes, if requested, for all reasonable costs incurred to inspect, sort, test, rework, replace, return, store or dispose of non-conforming Products, or otherwise associated with the discovery of non-conformance.

9.4 McInnes will hold non-conforming Products for 48 hours (or a shorter period if reasonable under the circumstances) from McInnes's notice of rejection. If Seller does not inform McInnes in writing of the manner in which

Seller desires that McInnes dispose of the non-conforming Products within that time, McInnes may dispose of the non-conforming Products in any manner it sees fit without liability to Seller, including arranging for shipment of the non-conforming Products back to Seller at Seller's expense. Seller shall bear all risk of loss and damage to non-conforming Products.

9.5 None of the following will constitute acceptance by McInnes of non-conforming Products or Services, limit or impair McInnes's right to exercise any of its rights and remedies under the Agreement or applicable law, or relieve Seller of its obligations (including warranty obligations) under the Agreement: (a) McInnes's inspection of or failure to inspect the Products or Services, (b) McInnes's failure to reject non-conforming Products or Services following receipt, and (c) McInnes's payment for or use of the Products or Services.

9.6 The supplier must notify McInnes of any changes in product and / or process definition; non-conforming product; changes of suppliers; and manufacturing facility location.

9.7 The supplier must flow down requirements of this order when sub-tiering.

## **10. Warranties**

10.1 Seller represents and warrants that the Products and their components will (a) conform to the most updated version of drawings provided by or approved by McInnes, (b) meet and perform in accordance with McInnes specifications and requirements, (c) be of new manufacture and of the highest quality, (d) be free from defects in design, workmanship and material, (e) be of merchantable quality and fit for their intended purposes, and (f) comply with all applicable laws, regulations and standards.

10.2 Seller represents and warrants that the Services will (a) conform to McInnes's specifications and requirements,

(b) be of the highest quality, and (c) be performed to the highest professional and workmanlike standards and in compliance with all applicable laws, rules, regulations and standards.

10.3 In respect of software that is incorporated in or forms a part of the Products or Services, Seller represents and warrants that such software will not contain any software intentionally designed to impair, disrupt, disable, harm or impede operation.

10.4 Upon a breach of any warranty in the Agreement, Seller shall promptly, at its sole cost and expense, (a) repair or remedy the defect or other failure, replace the affected Products, re-perform the affected Services or, at McInnes's option, provide a refund to McInnes for any affected Products and Services, and (b) reimburse and otherwise compensate McInnes for all of its direct, indirect, special, incidental, punitive and consequential damages, including recall costs, shut-down costs and lost or anticipated profits and revenues.

10.5 Seller's representations and warranties and all associated remedies will benefit and be enforceable by McInnes's successors, assigns and customers and by the users of the Products or Services.

## **11. Intellectual Property**

11.1 Seller represents and warrants that the Products and Services, and the manufacture, sale, use and provision of the Products and Services do not and will not infringe any trade secrets, patents, trademarks, copyright, design, other intellectual property right or any other right of any third party. Seller further represents and warrants that it has not received any notice from a third party that any of the Products or Services or their manufacture, sale, use or provision anywhere in the world violates or infringes or would violate or infringe the trade secrets or intellectual property or other rights of another. Seller is responsible for the payment of any fees, royalties and other charges necessary to maintain the rights required to fulfill these warranties.

11.2 If a third party enjoins or interferes with McInnes's use of any Products or Services, then in addition to Seller's other obligations, Seller shall (a) obtain any licenses necessary to permit McInnes to continue to use or receive the Products or Services, or (b) replace or modify the Products or Services as necessary to permit McInnes to continue to use or receive the Products or Services.

11.3 Nothing in the Agreement is intended or may be construed as a grant or assignment of any license or other right to Seller of any of McInnes's (or any of its affiliates') trade secrets or intellectual property or other rights.

11.4 All deliverables and works of authorship created in the course of performing the Agreement constitute works made for hire and will be the sole and exclusive property of McInnes. To the extent that such works do not qualify under applicable law as works made for hire, Seller hereby assigns and agrees to assign to McInnes all of its worldwide right and title to, and interest in, any such deliverables and intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants McInnes a worldwide, irrevocable, perpetual, royalty-free, transferable, sub-licensable license with respect to such

deliverables or works of authorship. Seller further grants McInnes a worldwide, irrevocable, perpetual, royalty-free, transferable, sublicensable license with respect to any intellectual property rights in the deliverables which arose outside the scope of the Agreement but are necessary for McInnes to exercise its rights in the deliverables as reasonably contemplated by the Agreement.

11.5 All improvements and developments related to the Products or Services arising out of the efforts of McInnes or both McInnes and Seller under or in connection with the performance of the Agreement will be owned exclusively by McInnes, and Seller shall reasonably cooperate with McInnes in confirming that result.

## **12. Indemnification**

12.1 Seller shall indemnify, defend and hold harmless McInnes and its affiliates and their respective directors, officers, employees, agents, representatives and customers against all claims, judgments, decrees, liability, damages, losses, costs and expenses (including actual attorneys' and consultants' fees) that arise out of or relate to

(a) any act or omission of Seller or its employees, subcontractors, agents or representatives, (b) the performance of any service or work by Seller or its employees, subcontractors, agents or representatives, or through their presence on McInnes's or McInnes's customers' premises, (c) the use of the property of McInnes or McInnes's customer, (d) any breach by Seller of its representations, warranties or obligations under this Agreement, (e) any alleged or actual infringement of the trade secrets or intellectual property or other rights of third parties, (f) Seller-furnished equipment, materials, Products or Services, or (g) any product information, operating instructions, safety information or other information or materials relating to the Products which were created by Seller or provided by Seller to McInnes or to purchasers or users of the Products. This Section applies to, among other things, claims for injury to or death of persons (including employees of Seller, McInnes or third parties) or damage to any property (including property of Seller, McInnes or third parties), and regardless of whether claims arise under tort, negligence, contract, warranty, strict liability or any other legal theory.

12.2 Seller intends that its indemnification obligations for claims related to or brought by anyone directly or indirectly employed by Seller or its subcontractors will not be limited by any provision of any workers' compensation act, disability benefits act or other employee benefit act, and Seller hereby waives immunity under such acts to the extent they would bar recovery under or full enforcement of Seller's indemnification obligations.

## **13. Insurance**



13.1 Seller shall carry the following insurance at its own cost, with no less than the limits indicated (unless otherwise specified by McInnes in writing), to cover all of Seller operations: (a) workers compensation insurance for all its employees and sub-contracted employees to the full extent required by state law including employers liability limits with a minimum \$500,000 bodily injury by accident limit for each employee; (b) comprehensive general liability insurance including products and completed operations with an each occurrence limit of \$1,000,000 and a US\$2,000,000 general aggregate; (c) commercial automobile liability insurance with a combined single limit of US\$1,000,000 and a US\$2,000,000 general aggregate; (d) umbrella or excess liability insurance with an each occurrence and annual aggregate limit equal to US\$4,000,000 in excess of the comprehensive general liability, commercial automobile liability and employer liability ; (e) for providers of consulting and engineering services - errors and omissions insurance to a combined single limit of US\$3,000,000.00; and (f) any other insurance required by law, reasonably requested by McInnes or customary for a supplier in Seller's position. The insurance coverage required by this Section must be with insurance carriers with a current A.M. Best rating of A or better. The policies must name McInnes as an additional insured and shall be primary and non-contributory with any insurance maintained by McInnes's. Upon McInnes's request, Seller shall furnish certificates of insurance evidencing compliance with these requirements. Such policies will not be cancelled or altered without McInnes receiving at least 30 days' prior notice. If Seller does not maintain the required insurance, McInnes may, at its option, procure the insurance for Seller and charge Seller for the costs. Seller shall also ensure that any permitted assignee or subcontractor maintains insurance in the same manner as required for Seller. The furnishing of certificates of insurance and purchase of insurance do not limit or release Seller from Seller's obligations and liabilities under the Agreement.

#### **14. Confidentiality**

14.1 "Confidential Information" means the confidential information of McInnes and its affiliates concerning the Agreement, the Products, the Services or the business of McInnes and its affiliates, that Seller comes to know through disclosure by McInnes or otherwise. Confidential information includes data, designs, drawings, specifications, know-how, trade secrets, the terms of any purchase order and other confidential technical or business information.

14.2 Seller (a) shall not disclose Confidential Information to any third party, except to those of its employees who have a need to know in order for Seller to fulfill its obligations under the Agreement and who have undertaken obligations of confidentiality and non-use no less protective than those binding on Seller under the Agreement, (b) shall protect the Confidential Information by using the same degree of care that it uses to protect its own confidential information of a similar nature (but not less than reasonable care), (c) shall not use the Confidential Information for any purpose other than to fulfill its obligations under this Agreement, and (d) shall return or destroy and certify Destruction of all Confidential Information at McInnes's request.

14.3 If any work is subcontracted in accordance with the Agreement, Seller shall require a similar confidentiality agreement from such subcontractors, but shall remain responsible for any breach by such subcontractors.

#### **15. Termination for Cause by McInnes**

15.1 McInnes may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, without liability to Seller, by notifying Seller in writing upon any of the following events: (a) Seller repudiates, breaches or threatens to breach any of the terms of the Agreement, (b) Seller sells or offers to sell a material portion of its assets, (c) there is a change in the control of Seller, (d) Seller becomes the subject of statutory or court-supervised proceedings in bankruptcy, receivership, liquidation, dissolution, reorganization or other similar proceedings, or (e) Seller has all or a substantial portion of its assets made subject to attachment by creditors or confiscation by government authorities. Seller shall reimburse McInnes for all costs and damages incurred by McInnes in connection with any of the foregoing whether or not the Agreement is terminated, as well as in connection with any termination, including all attorney's fees.

#### **16. Termination for Cause by Seller**

16.1 Seller shall not terminate the Agreement unless McInnes is in material breach of the Agreement, Seller has notified McInnes in writing of such breach and McInnes has not cured such breach within a reasonable time (but in any event not less than 60 days) after receiving such written notification.

## **17. Other Termination**

17.1 McInnes may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, at any time for its convenience, by notifying Seller in writing. If McInnes terminates pursuant to this Section, McInnes's sole obligation will be to reimburse Seller for (a) those Products or Services actually shipped or performed and accepted by McInnes up to the date of termination, and (b) actual costs incurred by Seller up to the date of termination for unfinished goods which are useable, in merchantable condition and specifically manufactured for McInnes and not standard products of Seller. McInnes will reimburse the costs in (b) only to the extent such costs are reasonable and properly allocable to the terminated portion of the Agreement, and after first subtracting the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with McInnes's written consent. McInnes's obligation to reimburse Seller under this Section will not exceed the purchase price in respect of the order (or portion thereof) terminated. All claims by Seller for reimbursement under this Section must be submitted in writing to McInnes within 30 days following the order termination date, with sufficient supporting data to permit an audit by McInnes. Failure to file a claim within such 30 day period will constitute a waiver by Seller of all claims. Seller shall thereafter promptly furnish any supplemental and supporting information McInnes requests.

17.2 McInnes will not be liable for, and Seller agrees not to assert that McInnes is liable for, any of the following: (a) consequential, incidental, indirect, special and punitive damages; (b) recall costs, line shut-down costs, lost or anticipated profits or revenue or cost of capital; (c) finished Products, work-in-process or materials which Seller fabricates or procures in amounts that exceed those authorized by McInnes in purchase orders or releases (but excluding forecast quantities); (d) goods or materials that are in Seller's standard stock or that are readily marketable; (e) claims of Seller's suppliers or other third parties for damages or penalties, and (f) all other losses, damages, liabilities, costs and expenses not expressly set forth in Section 17.1.

17.3 McInnes may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, by notifying Seller in writing, if it is affected by customer delays, cancellations or other events beyond its reasonable control. Such termination will be without liability or obligation to McInnes, including any obligation to reimburse Seller for any materials or work-in-process.

## **18. Compliance with Laws**

18.1 In the performance of its obligations hereunder, Seller shall comply with all applicable laws, statutes, regulations and ordinances, including the Foreign Corrupt Practices Act and the Fair Labor Standards Act. All applicable contract clauses required by any applicable law, statute, regulation or ordinance (including those set forth in 41 C.F.R. Parts 60-1.4(a) (women and minorities), 60-250.5(a) (covered veterans) and 60-741.5(a) (individuals with disabilities)) are incorporated herein by reference and made a part hereof.

18.2 At McInnes's request, Seller shall promptly furnish information relating to the hazardous, toxic or other content or nature of the Products or Services. Prior to, and together with, the shipment of Products, Seller shall furnish to McInnes and all carriers sufficient written warning and notice (including appropriate labels on the Products and packaging) of any hazardous material that is an ingredient or a part of any of the Products, together with all special handling instructions, safety measures and precautions necessary to comply with the law or to prevent bodily injury or property damage.

18.3 Where required by McInnes or by applicable laws or regulations, Seller shall furnish the most current information in either Material Safety Data Sheets (MSDS) or Safety Data Sheets (SDS) on the materials used in manufacturing the Products or the provision of the Services. The MSDS or SDS are to be sent to the plant environmental/safety coordinator at the McInnes facility to which the Products or Services are delivered.

## **19. International Trade and Customs**



19.1 Seller shall comply with all applicable export control laws and regulations, including the Export Administration Regulations. Seller shall not export or re-export any items or technical data furnished by McInnes, except with McInnes's prior written consent.

19.2 McInnes owns all transferable credits or benefits associated with or arising from the Products, including trade credits, export credits and rights to the refund of duties, taxes and fees.

19.3 Except with prior written permission from McInnes, Seller shall not (a) file, or cause or permit any third party to file, for duty drawback with customs authorities in respect of the Products or any component thereof, or (b) show, or cause or permit any third party to show, McInnes's name as "importer of record" on any customs declaration.

19.4 Seller shall provide McInnes, in a timely manner, with accurate information, records and documentation relating to the Products, which McInnes believes is necessary or desirable to fulfill customs and trade related obligations. This includes import compliance, export compliance, trade preference programs and similar obligations.

19.5 To the extent the Products are to be imported into the U.S, Seller shall comply with all applicable recommendations or requirements of the U.S. Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Where Seller does not exercise control of the manufacturing or transportation of the Products destined for delivery to McInnes or its customers in the U.S, Seller shall make C-TPAT security recommendations to its suppliers and transportation providers and condition its relationship with those entities on their implementation of such recommendations.

19.5 No later than the time of delivery, Seller shall provide McInnes with the applicable Export Control Classification Numbers ("ECCNs") of the Products and their components and the Services.

## **20. Seller Code of Conduct**

20.1 McInnes expects Seller to adopt a code of ethical business conduct suitable to its business, and conform to such code. The code should establish that Seller shall comply with all pertinent laws and regulations, and should address Seller's policies regarding workplace health and safety, labor standards, protection of the environment and resources, product safety and quality and anticorruption.

## **21. Other Rights and Remedies**

21.1 Seller acknowledges that breach by Seller of the Agreement could cause irreparable harm to McInnes for which monetary damages may be difficult to ascertain or may constitute any inadequate remedy. Seller, therefore, agrees that McInnes shall be entitled to sue for specific performance or seek injunctive relief for any violation or threatened violation of the Agreement by Seller without the filing or posting of any bond or surety. McInnes may seek a temporary and/or permanent injunction (or other similar relief in accordance with applicable law) from any court or other authority having competent jurisdiction, and such courts may apply local laws in determining whether to grant the injunction.

21.2 McInnes's rights and remedies set forth in the Agreement are in addition to any other legal or equitable right or remedy available to McInnes.

## **22. Miscellaneous**

22.1 The words "such as", "include" and "including" are to be construed as if they were followed by "without limitation", unless the accompanying text or the context clearly requires otherwise.

22.2 Seller may not assign its rights or obligations under the Agreement. Any attempted assignment will be void, unless McInnes has given its prior written consent to such assignment. McInnes may assign its rights under the Agreement. In the event of a change of control of Seller; Seller shall promptly notify McInnes in writing of the change.

22.3 If any term of the Agreement is declared unenforceable, the remaining terms will remain in effect, and the unenforceable term will be replaced by a term that is valid and enforceable and that comes closest to expressing the intention of the unenforceable term.

22.4 Any terms which, by their nature, extend beyond the expiration or termination of the Agreement will survive the expiration or termination of the Agreement, including Sections 6, 10, 11, 12, 13, 14 and 19.

22.5 The Agreement is governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, USA, without reference to its conflict of laws rules. Both parties consent to the jurisdiction of the state and federal courts having authority over the territory of Erie County, Pennsylvania for the resolution of any dispute arising under the Agreement; that consent will be to the exclusive jurisdiction of such courts, except if Seller is from or Seller's assets are located in a jurisdiction that does not recognize judgments issued by such courts for enforcement, in which case McInnes may choose to bring suit in other courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

22.6 Each party hereby waives to the fullest extent permitted by applicable law any right it may have to a trial by jury in respect of any litigation arising in connection with the Agreement.

22.7 The Agreement does not create an agency, partnership or other relationship other than that of independent contracting parties. Seller has no authority to bind or commit McInnes.

22.8 A reference in this Agreement to the consent or approval of McInnes is a reference to the consent or approval of a representative of McInnes duly authorized by McInnes to give such consent or approval.

22.9 McInnes may provide translated versions of the terms and conditions for informational purposes only. The original English language version will apply in the event of any disagreement over the meaning or construction of any provisions.

22.10 Seller shall not in any manner advertise or publish that Seller has contracted to furnish McInnes the Products or Services, or use any trademarks or trade names of McInnes in Seller's goods, advertising or promotional materials except with McInnes's prior written consent.