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PURCHASING TERMS AND CONDITIONS

CONCERNING THE SUPPLY OF GOODS

vdLEE B.V.


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van der Lee Turbo Systems B.V.

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PARTIES:


- 1 **vdLEE B.V.**, a private company with limited liability having its registered office at Amsterdam, and its principle place of business in, (1507CB) Zaandam on the Kleine Tocht 3, the Netherlands, registered with the Chamber of Commerce of Amsterdam under number 59787864 (hereinafter: “vdLEE”), and its affiliate van der Lee Turbo Systems B.V. registered under Chamber of Commerce of Amsterdam under number 61080632

And,

- 2 Seller's opposite party, acting in the course of a business or in the course of a profession. (hereinafter: “Seller”),

WHEREAS:

- A) vdLEE is a manufacturer and supplier of turbochargers and;
- B) vdLEE’s objective is to continuously improve its products and always meet customer requirements;
- C) Its relation with its customers is considered crucial in every process or activity that leads to its final product. In this regard vdLEE wishes to enter into supply agreements with its own suppliers that show the same degree of care and commitment to vdLEE’s customers;
- D) Seller is a manufacturer of products, and is willing and able to supply vdLEE with the products in the volume and quality required by vdLEE under the terms and conditions of this agreement (“Purchasing Terms and Conditions”);
- E) Seller agrees in principle to accept all terms and conditions that Buyer agrees to in the agreement between Buyer and its customers,


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HAVE AGREED THE FOLLOWING:

DEFINITIONS

In these Purchasing Terms and Conditions:

- 1) "Buyer" means vdLEE and/or any of its divisions, subsidiary companies, or purchasing agents authorized by vdLEE to purchase on its behalf;
- 2) "Seller" means the person or company with whom the Buyer enters into the Purchasing Terms and Conditions;
- 3) "Goods" means the equipment, machinery, materials, related service, and critical documents thereof to be furnished by the Seller with the specifications and quantities in conformity with the Purchase Agreement;
- 4) "Purchasing Terms and Conditions" means this agreement, including the underlying Purchase Agreement(s);
- 5) "Purchase Agreement" means the purchasing agreement(s) under the Purchasing Terms and Conditions for the supply of a specific quantity of the Goods at a specific time, a concept of which is attached as Annex 1;
- 6) "Purchase Order" means the order issued by the Buyer by which the Goods are ordered under the Purchase Agreement;
- 7) "Specifications" means any technical description, drawing of the Goods, quality control requirements, or packing instructions contained or referred in the Purchasing Terms and Conditions and / or Purchase Agreement.
- 8) "Tooling" means all prototype and production tools, dies, fixtures, jigs, gauges, moulds, patterns and related software purchased by the Buyer under Tool Orders. Tooling further includes all accessions, appurtenances, modifications, repairs, refurbishments, and replacements to the Tooling and any related drawings;
- 9) "Tool Order" means the purchasing order(s) under the Purchasing Terms and Conditions issued by the Buyer for the supply of Tooling in connection with a Purchase Agreement, which contains the specifications of the Tooling as well as the delivery date.


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ENTIRE AGREEMENT

The Purchasing Terms and Conditions and its underlying Purchase Agreement(s) constitute the entire agreement between the Buyer and the Seller. The parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Purchasing Terms and Conditions. Any change, amendment, or modification of any of the terms and conditions of the Purchasing Terms and Conditions or waiver of any of the terms hereof shall be made in writing and executed upon the agreement of both parties. Any acknowledgment or other form containing terms and conditions submitted by the Seller shall not have the effect of modifying the terms and conditions hereof and/or of adding any different terms and conditions. The Buyer will consider the Seller's requests for changes only if such requests are in writing and are directed to specific clauses in the Purchasing Terms and Conditions. No change shall be binding upon the Buyer unless specifically accepted in writing.

ORDER OF PRECEDENCE


- 1) If any conflict, inconsistency or ambiguity is found to exist among any of the documents comprising or relating to the Purchasing Terms and Conditions or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying the order of precedence provided in the Purchasing Terms and Conditions. If no such provision is included in the Purchasing Terms and Conditions, the following documents shall constitute the Purchasing Terms and Conditions with the order of the precedence as set out below:
 - (a) The Purchasing Terms and Conditions;
 - (b) The Purchase Agreement;
 - (c) The Specifications;
 - (d) The General Technical Conditions, if any;
 - (e) The Purchase Order,
- 2) If the Seller is unable to resolve any conflict, inconsistency or ambiguity among any of the Purchasing Terms and Conditions documents or among any of the requirements or provisions thereof by referring to the order of precedence set out in the Purchasing Terms and Conditions, or if the Seller suspects that resolution according to the order of precedence set out in the Purchasing Terms and Conditions would conflict with the Buyer's actual intent, then the Seller shall notify the Buyer immediately. In such case, the Buyer shall determine in writing the proper resolution of such conflict, inconsistency or ambiguity, and both parties shall be bound by that determination. If the Seller resolves any such conflict, inconsistency or ambiguity without the Buyer's written

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determination, and without respect to the order of precedence as set out in the Purchasing Terms and Conditions, then the Seller proceeds at its own risk and expense, and the Buyer shall be free thereafter to resolve the conflict, inconsistency or ambiguity without regards to the Seller's actions, without any adjustment in the Purchase Agreement price, and without incurring any liability to the Seller because of the Seller having proceeded in accordance with its own interpretation.

PURCHASE AGREEMENT

- 1) After the Purchasing Terms and Conditions have been entered into, Buyer and Seller may agree on the Purchase Agreement, which Purchase Agreement shall be limited to the terms and conditions under which the Goods will be supplied regarding:
 - (a) Price and payment;
 - (b) Quantity;
 - (c) Specifications;
 - (d) Delivery address;
 - (e) Delivery terms.
- 2) Unless otherwise stated in the Purchase Agreement, the Purchase Agreement starts on the day that the Purchase Agreement is signed by the last party thereto and expires 5 (five) years later.
- 3) The Purchase Agreement will be automatically renewed for an additional 1 (one) year period, unless a notice of non-renewal has been provided. Buyer will provide such notice within 60 (sixty) days before expiration of the Purchase Agreement. The Seller will do so sufficiently in advance of expiration of the Purchase Agreement to enable the Buyer to resource the production of the Goods in a timely and orderly manner, but in no case later than 180 (one hundred eighty) days before expiration of the Purchase Agreement. In all cases, the Seller will consult with the Buyer's production purchasing division prior to giving its notice to ensure that it will be timely, and the parties will confirm in writing their agreement to the Seller's notice period. If the Seller elects not to renew, it will, if requested by the Buyer: (a) work diligently with the Buyer to identify an alternative source of supply that is acceptable to the Buyer; and (b) identify the Seller's component-part and raw-material suppliers relating to the Goods.
- 4) The Buyer, at its option, may extend the term of the Purchase Agreement for up to 4 months beyond the Purchase Agreement's expiration date. As such, the Purchase Agreement will expire at the end of the extended term. The Buyer will provide the Seller with notice of any such term 30 (thirty) days prior to the Purchase Agreement's expiration. Any such notice will not amend any of the terms and conditions of the Purchasing Terms and Conditions, including the Purchase Agreement, except for the

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Purchase Agreement's expiration. If a longer transition period is required, the Buyer and the Seller will negotiate in good faith the terms and conditions of such extension.

PRICE AND PAYMENT


- 1) Unless otherwise stated in the Purchase Agreement, all prices for the Goods are firm and are not subject to price escalation for any reason whatsoever.
- 2) Any applicable sales, use or similar taxes levied in the country of manufacturing and/or shipping, export charges, fees, and all other expenses are included in the price.
- 3) Seller will prepare an invoice for the Goods delivered, which invoice shall contain:
 - (a) specification of the Goods with part number included;
 - (b) specification of the quantity of Goods delivered;
 - (c) the Purchase Order number;
 - (d) date of the Purchase Order.
- 4) Payment will be made within 90 (ninety) days after invoice date, unless otherwise stated in the Purchase Agreement. The Buyer may at any time deduct or set-off any payment to the Seller by an amount of equal value to any outstanding claim or charge that the Buyer has against the Seller.

DELIVERY

- 1) Time of delivery is of the essence of the Purchase Agreement and underlying Purchase Orders, and the Seller shall deliver the Goods in accordance with the requirements specified in the Purchase Agreement and underlying Purchase Orders.
- 2) Unless otherwise stated in the Purchase Agreement, the terms and conditions of delivery shall be interpreted in accordance with INCOTERMS 2010 (International Rules for the Interpretation of Trade Terms) and its supplements published by the International Chamber of Commerce in 1999.

TITLE AND RISK

Unless otherwise stated in the Purchase Agreement, the Goods or part thereof shall become the property of the Buyer free from liens and other encumbrances at whichever is the earlier of: (a) completion of delivery by the Seller in accordance with the delivery terms of the Purchase Agreement; or (b) when the Seller is entitled to payment of the value of the Goods or part thereof under the Purchase Agreement. The Seller shall be responsible for and shall bear any and all risk of loss of or damage to the Goods until completion of delivery in accordance with the delivery terms of the Purchase Agreement.

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PRODUCTION AND QUALITY CONTROL


- 1) The Seller shall comply with any quality control and/or inspection standards established or directed by the Buyer.
- 2) Every two (2) weeks, the Seller shall submit to the Buyer a status report summarizing the scheduled dates for completion of production, and for cargo readiness of all outstanding Purchase Agreements.
- 3) The Seller shall notify the Buyer in writing of any actual, or anticipated or potential causes of delay in the delivery of the Goods that conform with the requirements of the Purchase Agreement, within three (3) days whenever such causes are observed.
- 4) The Buyer may for expediting or quality assurance purposes, send its own staff or other personnel whom the Buyer has retained to any place where the Goods are manufactured, packed or transported as provided in Clause 0 hereof. The Seller shall bear the cost of corrective measures or improvements reasonably required by the Buyer's staff or representatives in order to enable or ensure timely delivery of the conforming Goods.
- 5) Nothing in this Clause 0 shall in any way relieve the Seller from its obligation of timely delivery of the Goods pursuant to Clause 0 hereof.

CONTINUOUS IMPROVEMENTS

The Seller will ensure continuous quality improvement in the manufacture, production and distribution of the Goods. The Seller will comply with the quality assurance processes, inspections and standards specified by the Buyer for suppliers providing goods or services similar in nature to the Goods.

ERRONOUS, EXCESS OR SHORTAGE OF DELIVERY

Seller shall deliver the Goods in the quantities and at the times specified by the Buyer in the Purchase Agreement. Time and quantity are of the essence in the purchase of the Goods. Buyer is not obligated to accept any early, late, partial, or excess deliveries. Unless otherwise instructed by the Buyer, the Seller shall withdraw, at its cost and no later than the date designated by the Buyer, any and all items delivered in error or excess of the Purchase Agreement. In the event of the Seller's failure to accomplish a timely withdrawal of the erroneously delivered or excess items, the Buyer may arrange to return such items to the Seller at the Seller's cost. In the event that Seller delivers less than the quantity of Goods stated in the Purchase Agreement, it shall be deemed a Delay in Delivery and Buyer's rights and Seller's obligations shall be as prescribed in Clause 0 hereof.

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PACKING


- 1) Seller shall pack the Goods in accordance with the Specifications and/or instructions provided in the Purchase Agreement. In the absence of specific instruction concerning the method of packing, the Seller shall, in accordance with customary export packing and anti-corrosion standards for the delivery method specified in the Purchase Agreement, take all reasonable steps to prevent damage to or deterioration of the Goods in transit to their destination as specified in the Purchase Agreement.
- 2) The Purchase Agreement price includes the cost of packing required in paragraph 1), above.
- 3) Unless otherwise stated in the Purchase Agreement, Seller shall submit a proforma packing list which shows approximate dimensions and weight of the packed Goods and the place of shipment, no later than two (2) weeks before delivery.
- 4) At Buyer's discretion, the Buyer may dispatch its nominated carrier or freight forwarder to the Seller's facilities to hold a pre-shipment meeting to confirm transport mode and procedure.

DELAY IN DELIVERY

In the event that the delivery of the Goods, whether partially or in whole, is delayed beyond the delivery time specified in the Purchase Agreement, Seller will be automatically in default (in Dutch: *verzuim*) without a formal notice of default (in Dutch: *ingebrekestelling*) being required, and the Buyer shall, at its sole discretion and without prejudice to its rights under Clause 0 hereof or any other rights granted by the law, have the right to:

- (a) Require the Seller to bear the premium freight costs of an expedited shipping method to be designated by the Buyer, and
- (b) Cancel the respective Purchase Agreement(s), and undertake to procure from an alternative source Goods meeting approximately the same specifications required by the Purchase Agreement, and in such an event, the Seller shall pay all costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Purchase Agreement, and
- (c) Claim from Seller a fine to the amount of the value of the Purchase Order (with a minimum of EUR 10,000.--) for each day or part thereof that the delay continues, which fine is immediately due and payable, notwithstanding Buyer's rights to claim the actual damage incurred from Seller.

The rights of Buyer as outlined above may be exercised individually, or in any combination at the Buyer's option.


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INSPECTION AND TEST BY SELLER

- 1) Before shipping, the Seller shall carefully inspect and test the Goods for compliance with all applicable requirements including the inspection of quantities and packing conditions. The Seller shall, in accordance with the inspection and test requirements in the Specifications and/or the Purchasing Terms and Conditions, give the Buyer reasonable notice of such inspection or test and the Buyer (or Buyer's authorized agent) shall be entitled to attend such inspection or test. The Seller shall submit to the Buyer, at the Buyer's request, all data and other records relating to the inspection or test.
- 2) The Buyer's and/or the Buyer's agent's attendance or non-attendance at such inspection or test does not constitute acceptance of the Goods or the inspection or test results, and in no way relieves the Seller of any liabilities or responsibilities for any defects.

INSPECTION AT THE DESTINATION

- 1) Buyer is not required to inspect the Goods before use. If, as a result of an inspection carried out after receipt of the Goods, the Buyer finds that the Goods do not comply with the Purchase Agreement, the Buyer may, by written notice to the Seller, reject such non-complying Goods and may require the Seller to repair or replace at the Seller's cost the rejected Goods with Goods which comply with the Purchase Agreement.
- 2) Alternatively, the Buyer may, at its option, accept the non-complying Goods, and elect to undertake to cure the items at the Seller's expense, or make an equitable adjustment in the purchase price.
- 3) In any case, however, upon receipt of notice of non-complying Goods issued by the Buyer, the Seller shall immediately initiate countermeasures to ensure that for all further deliveries under the Purchase Agreement the Goods will comply with the Purchase Agreement. The Seller shall submit the countermeasure plan to the Buyer within three days of receipt of the notice of non-complying Goods.
- 4) The Buyer's inspection, or failure to inspect, in no way relieves the Seller of any liabilities or responsibilities for any defects (latent or otherwise) or non-compliance of the Goods to requirements of the Purchase Agreement.
- 5) Notwithstanding any of the above, if during an inspection of a sample of a shipment of Goods received by the Buyer, non-complying Goods are found by Buyer in excess of 40 (forty) parts per million ("PPM"), then PPM non-conformity of the Goods is established, unless another rate has been agreed upon in the Purchase Agreement ("PPM Non-Conformity").
- 6) Notwithstanding any liabilities under the Purchasing Terms and Conditions, Seller shall compensate the administrative costs involved, being EUR 50,-- (with an yearly increase

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as of 2008 of 3%) each case non-conforming Good(s) is/are found by Buyer during such an inspection or test.


PPM NON-CONFORMITY

In case of PPM Non-Conformity, the Buyer may, at its sole discretion:

- 1) reject the entire respective shipment and require the Seller to repair or replace the rejected Goods with Goods that comply with the Contact, or,
- 2) reject the entire respective shipment, cancel the respective Purchase Agreement(s), and undertake to procure from an alternative source Goods meeting approximately the same specifications required by the Purchase Agreement, and in such case, the Seller shall pay all costs and other expenses incurred by the Buyer in excess of the purchase price specified in the Purchase Agreement, or,
- 3) carry out an inspection of the entire respective shipment, and reject the portion of Goods that do not comply with the Purchase Agreement requirements. In such case, Seller shall pay all costs incurred by the Buyer for such inspection of the Goods. Repair or replacement of the rejected Goods shall be directed by the Buyer with the same rights and obligations outlined in sub-clause 4) 1) and 2) above.

CONTROLLED CONTAINMENT LEVELS

- 1) The following procedure constitutes the controlled containment level 1 ("CCL1"):
 - (a) Upon notification of CCL1, Seller - at its own costs and expenses - will remove all Goods from the suspected stock from Buyer's production and storage areas.
 - (b) Upon notification of CCL1, Seller shall without undue delay in its own name and at its own costs and expenses instruct an external sorting company that is prescribed by Buyer ("Sorting Company") to separate all non-conforming Goods from the suspected stock in conformity with IATF 16949 sub 8.3 (edition 1 March 2003) ("CCL1 Activities"). Seller hereby authorises Buyer to represent Seller vis-à-vis the Sorting Company regarding the CCL1 Activities. Seller will not terminate CCL1 Activities without Buyer's instruction.
 - (c) Seller shall immediately initiate steps to sufficiently and adequately contain the cause of the non-conformity, in conformity with IATF 16949 sub 8.5 (edition 1 March 2003). Seller shall immediately notify Buyer by registered mail that it has - in conformity with IATF 16949 sub 8.5 (edition 1 March 2003) - sufficiently and

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adequately contained the cause of the non-conformity. This notification will be referred to as the “Break Point”.

(d) CLL1 will terminate (i) automatically when three (3) consecutive production batches of the relevant Goods have been made after the Break Point, in which no non-conforming Goods have been detected, or (ii) if Buyer determines - in its sole discretion - that the Seller has effectively contained the issue.

2) The following procedure constitutes the controlled containment level 2 (“**CCL2**”):


(a) Upon notification of CCL2, Buyer is entitled to instruct an external sorting company that is prescribed by Buyer (“**Sorting Company 2**”) - in Seller’s name and at Seller’s costs and expenses - to separate all non-conforming Goods from the suspected stock in conformity with IATF 16949 sub 8.3 (edition 1 March 2003) (“**CCL2 Activities**”). Seller hereby authorises Buyer to represent Seller vis-à-vis the Sorting Company 2 regarding the CCL2 Activities. Seller will not terminate CCL2 Activities without Buyer’s instruction.

(b) Buyer is entitled to immediately initiate steps on behalf of Seller at the production facilities of Seller - at Seller’s costs and expenses - to sufficiently and adequately contain the cause of the non-conformity, in conformity with IATF 16949 sub 8.5 (edition 1 March 2003).

(c) CLL2 will terminate if the causes that lead to the initiation of CCL 1 and or CCL2 have been eliminated.

CONTAINMENT

Buyer may choose to immediately initiate CCL1 when a non-conforming Good is detected after delivery, while in Buyer’s opinion no conclusive evidence is available that the non-conforming Good concerns an isolated incident and which in Buyer’s opinion jeopardises the further processing of Goods.

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PPM PERFORMANCE

Without prejudice and in addition to any other rights or remedies which it may have hereunder or at law the following applies:


- 1) If PPM Non-Conformity occurs during a period of 3 (three) consecutive months, Buyer is allowed to immediately initiate CCL1 after notifying Seller thereof.
- 2) Notwithstanding the above, Seller shall - at Buyer's first request and at Buyer's sole discretion - provide Buyer with a PPM recovery plan, which will be presented at Buyer's premises ("**PPM Plan**"). Said presentation shall be given within two (2) weeks after notification of the PPM Non-Conformity by Buyer. The PPM Plan will include amongst others: a thorough root-cause analysis, a plan of action to achieve the agreed upon performance standards and Specifications and the timeframe required.
- 3) The implementation of the PPM Plan can only commence upon Buyer's prior written approval. After implementing the PPM Plan, Buyer may in its sole discretion elect to assess the PPM Plan at the Seller's premises two (2) weeks after the presentation of the PPM Plan. If after the implementation of the PPM Plan the number of non-conforming Goods do not decrease or still lead to PPM Non-Conformity, then the Buyer may in its sole discretion elect to initiate CCL1.

BREAKPOINT VIOLATION

In case a non-conforming Good is detected after Break Point, which non-conformity is essentially similar to the non-conformity that leads to the initiation of CCL 1, such constitutes a "**Break Point Violation**". In case of a Break Point Violation Buyer is entitled to initiate CCL2.

CHANGES

- 1) The Seller shall not make any change in the Specifications, quantities, methods of shipment, schedule or places of delivery without prior written consent of the Buyer.
- 2) The Buyer may at any time direct, in writing, changes in the Specifications, quantities, methods of shipment, schedule or place of delivery of the Goods, and the Seller shall thereby be bound, unless the Seller demonstrates that such changes will reduce the safety or suitability of the Goods.

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- 3) If the Buyer directs any such changes, the Seller shall submit in writing, as soon as practicable but within ten (10) days of the Buyer's notice of such changes, its proposal for adjustment in the price of the Purchase Agreement and/or in the time of delivery of the Goods. The Buyer shall then, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. Buyer reserves the right to request Seller to submit documentation evidencing the reasonable impact on the price and/or time of delivery of the Goods. In the event the Seller fails to submit its proposal within five (5) working days, the Buyer may adjust the price and the time of delivery at its sole discretion. The Seller shall not delay any work whilst awaiting a response or a price adjustment agreement to be reached.

SELLER'S DOCUMENTS

Documents such as drawings for approval, drawings for installation, drawings showing the finished condition of the Goods, shipping documents, instruction books and operation manuals, etc. shall be supplied by the Seller to the Buyer in accordance with any requirements stated in the Purchase Agreement. The Seller shall be responsible for any inconsistencies, errors or omissions contained in such drawings, shipping documents, instruction books and operation manuals etc. and shall be liable for any damage that may arise from the Seller's failure to comply with the requirements herein. The Buyer's approval of the Seller's documents shall not relieve the Seller of any of its obligations and responsibilities under the Purchase Agreement.

WARRANTIES

- 1) The Seller warrants that the Goods conform to the requirements of the Purchase Agreement and the Specifications and that the Goods are new, merchantable, of good design, material and workmanship, free from defects, and fit and safe for the purpose intended. These warranties shall be in addition to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of the Goods does not constitute a waiver of any of the Buyer's rights in the event of any breach of warranty.
- 2) Unless otherwise stated in the Purchase Agreement, the Seller warrants that the Goods shall operate in accordance with the Seller's representations and in accordance with all the requirements of the Purchase Agreement for a period of forty eight (48) months from the date when the Goods are delivered to their end user.
- 3) Any weakness, deficiency, failure, breakdown or deterioration beyond normal wear and tear for the intended service that appears or is discovered as a result of defective material, faulty design, poor workmanship or poor packing or crating shall be repaired or replaced by the Seller at the Seller's expense within the time designated by the

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Buyer. Without limiting the generality of the foregoing, and without prejudice to any rights of the Buyer under the Purchasing Terms and Conditions or otherwise, the Seller shall bear premium freight costs of expedited shipping method designated by Buyer, customs duties and all other expenses up to the final destination for any repaired and/or replaced Goods or any part thereof. The Seller shall reimburse the Buyer all costs proximately caused by the Seller's breach of any of the foregoing warranties and incurred by the Buyer, including incidental costs such as removal, inspection, detection, and costs of recall, return and warehousing.


- 4) When the Seller cannot repair or replace within the time designated by the Buyer, the Buyer may undertake to repair or replace at the Seller's expense. The Buyer may, at its option, elect to accept the defective Goods, whereupon an equitable adjustment in the price of the Purchase Agreement shall be made.
- 5) In the event that defective or non-complying Goods are found at a rate listed in Clause 0 or more in a representative sample of a single shipment or lot of Goods received by the Buyer, the Buyer may at its discretion require the Seller to repair or replace the entire shipment or lot in accordance with the conditions outlined above.

SPARE AND REPLACEMENT PARTS

The Seller shall make available to the Buyer at least for a period of fifteen (15) years as per the Purchase Agreement's expiration, repair or replacement parts for the Goods at a charge (i) not to exceed the lowest price charged by the Seller to any third party for such repair or replacement parts, or if the Goods are not supplied to any third party (ii) at the price at which the Goods were lastly ordered by Buyer with a yearly price increase of 5% as of that moment, though such price will never exceed an increase in price with more than 25%. If Buyer has a legal obligation to make service or spare parts available for a longer period, the Buyer will advise Seller, in which case Seller will supply the parts for this longer period.

COMPETITIVENESS CLAUSE

- 1) Seller should maintain a competitive position regarding the pricing, logistics, quality and quantity of the Goods in relation to other manufacturers ("Competitiveness Clause").
- 2) If , to the sole opinion of Buyer, Seller breaches the Competitiveness Clause, then Buyer and Seller will meet to discuss within 1 (one) week after notification thereof by Buyer. If, to the sole opinion of Buyer, no suitable agreement can be reached within 4 (four) weeks after such discussion, then Buyer may directly terminate the relevant Purchase Agreement(s).

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TOOLING

- 1) If the Buyer issues a Tool Order, the Seller will design, produce, rework, or acquire, and install Tooling that fully conforms to the specifications of the Tool Order. The Tooling must be capable of producing the volumes of the Goods as provided in the relevant Purchase Agreement, as well as satisfying the requirements for spare and replacement parts. The Tooling shall only be marked with the name of the Buyer.

- 2) The Seller, at its own expense, will first manufacture the requisite number of sample Goods using the Tooling. The Tooling will be completed when the requisite number of samples have been submitted and approved by the Buyer. The Seller has no claim for payment until the Tooling is completed and approved by Buyer.


- 3) The Buyer becomes the sole owner of all Tooling as soon as it is fabricated or acquired by the Seller. Seller now for then transfers the ownership of the Tooling to Buyer. The Tooling shall be clearly marked as being the sole property of the Buyer.

- 4) The Seller will not use the Tooling for any purpose other than as provided under the Purchase Agreement.

- 5) The Seller will at its sole expense:
 - (a) Maintain the Tooling, including its repair or replacement, in the condition necessary to produce the Goods in accordance with the terms of the Purchase Agreement or requirements of spare parts. Seller is further responsible for all wear and tear to the Tooling;
 - (b) Properly house the Tooling and insure them against damage or loss.

- 6) Once installed Seller shall not remove from its premises, relocate, dismount or dismantle the Tooling without prior written notice of Buyer.

- 7) Upon Buyer's request, the Seller will return the Tooling, to the Buyer or other location specified by the Buyer. The Seller is responsible for (all costs and expenses associated with) labour and other costs of dismounting, dismantling, and staging the Tooling for removal.

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- 8) In the event the Seller fails to comply with the Purchase Agreement, and the Buyer determines that it is necessary to either take possession of the Tooling or have it relocated, the Seller will provide the Buyer with any technical information for the Tooling required for its relocation, installation, assembly, maintenance, or use.


BUYER'S SUPPLIES

In the event that the Buyer furnishes the Seller with any materials and/or finished or semi-finished parts to be built or assembled into the Goods or tools and/or equipment (hereinafter collectively referred to as the "Buyer's Supplies") to facilitate the Seller's manufacture of the Goods, the terms and conditions relating to the delivery of and any payment for such Buyer's Supplies will be set forth in the Purchase Agreement. In addition to such terms and conditions as set forth in the Purchase Agreement, the following terms and conditions apply:

- 1) The risk of damage to or loss of the Buyer's Supplies shall be transferred from the Buyer to the Seller upon delivery of them in accordance with the terms of the Purchase Agreement;
- 2) Notwithstanding the paragraph 1) above, the Buyer's Supplies shall remain the sole property of the Buyer and clearly be identified and marked as such until the Goods incorporating such Buyer's Supplies have been duly delivered in accordance with the terms of the Purchase Agreement;
- 3) Any of the Buyer's Supplies that remain following completion of the required manufacturing or work shall be returned by the Seller to the Buyer upon such completion, unless otherwise provided in the Purchase Agreement;
- 4) The Seller shall protect and safeguard any and all of the Buyer's Supplies in the Seller's possession, shall keep them all insured and recorded, and shall take all measures reasonably necessary to prevent deterioration, damage and/or loss to any of Buyer's Supplies, including loss by confiscation or seizure; and
- 5) The Seller shall not use any Buyer's Supplies for any purpose other than the performance of the Purchase Agreement, and shall not sell, lend or pledge them without the Buyer's prior written consent.

THE BUYER'S REPRESENTATIVE

The Buyer may, with a written notice to the Seller, send its own staff or other personnel whom the Buyer has retained to monitor the Seller's performance of the Purchase Agreement or to provide the Seller with expediting or quality assurance advice. The Seller shall provide these personnel with reasonable and free access to the plants of the Seller and

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its subcontractors and to any other places where the Goods, in whole or in part, are manufactured, packed or transported.

SUSPENSION

The Buyer may, by written notice, suspend all or part of the work to be performed under these Purchasing Terms and Conditions for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the parties may agree, the Buyer shall either cancel such suspension or terminate the work covered by the suspension in accordance with Clause 0 or Clause 0 hereof. The Seller shall resume the work whenever a suspension is cancelled or expires. An equitable adjustment shall be made in the delivery schedule or the price of the Purchase Agreement, or both, if the suspension results in a change in the Seller's cost of performance or ability to meet the delivery schedule, provided the Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with Clause 0 hereof.

TERMINATION FOR DEFAULT


- 1) If the Seller (a) fails to deliver the Goods at the times specified in the Purchase Agreement(s), (b) fails to perform any other provisions contained herein or in the Purchase Agreement or fails to make progress so as to endanger timely and proper delivery of the Goods and does not cure such failure within a period of ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from the Buyer specifying such failure, (c) becomes insolvent, makes an assignment in favour of creditors, or enters bankruptcy or dissolution procedures or (d) is merged into another company and/or is expropriated or nationalized, or (e) the Buyer has reasonable grounds to believe that the Seller is unable to deliver the Goods at the time specified in the Purchase Agreement, or (f) if PPM Non-Conformity is established, or (g) a Breakpoint Violation is established, the Buyer may by written notice to the Seller directly terminate the Purchasing Terms and Conditions and any underlying Purchase Agreement(s), in whole or in part, without any liability to the Seller, without an obligation to pay damages, and without prejudice and in addition to any other rights or remedies which it may have hereunder or at law.
- 2) Upon such termination the Buyer shall have the right to:
 - (a) terminate in whole or in part, without any liability to the Seller, any Purchase Order(s) that have not yet been delivered by the Seller;
 - (b) terminate in whole or in part any Purchase Agreement(s) that have already been delivered by the Seller, with the sole liability of the Buyer being to return to the

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- Seller the Goods delivered under the terminated portion of the Purchase Agreement(s) at the Seller's cost; and
- (c) purchase elsewhere Goods meeting approximately the same specifications of the Goods to be furnished under any terminated Purchase Agreements and, in such an event, the Seller shall pay all excess costs and other expenses the Buyer incurs in excess of the purchase price herein specified.

TERMINATION OF ORDER AT THE BUYER'S OPTION

- 1) Only Buyer may terminate any Purchase Agreement(s) in whole or in part at any time before expiration by giving written notice to the Seller. Upon receipt of any such notice, the Seller shall, unless the notice requires otherwise:
 - (a) Immediately discontinue work on the date and to the extent specified in the notice;
 - (b) Place no further orders for materials other than as may be necessarily required for completion of such portion of the work that is not terminated;
 - (c) Promptly make every reasonable effort to either obtain cancellation on terms satisfactory to the Buyer of all orders to sub-contractors or assign those orders to the Buyer; and
 - (d) Assist the Buyer, upon request, in maintenance, protection, and disposition of property acquired by the Buyer hereunder.
- 2) If claimed in writing within thirty (30) days after the notice of termination and proved to the satisfaction of the Buyer, the Buyer will pay to the Seller an equitable adjustment of the price of the Purchase Agreement which consists of:
 - (a) All amounts due and not previously paid to the Seller for the Goods completed in accordance herewith prior to such notice;
 - (b) A reasonable amount for any Goods and materials then in production provided that no such adjustment be made in favour of the Seller with respect to any Goods which are the Seller's standard stock; and
 - (c) Cost of settling and paying claims arising out of the cancelled orders;
- 3) Payment under this Clause constitutes the Buyer's only obligation to the Seller in the event that any Purchase Agreement is terminated as provided in this Clause. The Seller's acceptance of such payment constitutes an acknowledgment that the Buyer has discharged that obligation. The provisions of this Clause do not apply to any termination by the Buyer for the default of the Seller or for any other cause allowed by law or under these Purchasing Terms and Conditions.
- 4) Termination, or expiration of the Purchasing Terms and Conditions, or of any individual Purchase Agreement(s), regardless of the reason(s), shall not relieve the Seller of any obligations or liabilities affected upon Seller under these Purchasing Terms and Conditions prior to the termination or expiration.


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RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE

- 1) When reasonable grounds for insecurity arise with respect to the Seller's performance, the Buyer may in writing demand adequate assurance of due performance and, until it receives such assurance, may suspend its performance.
- 2) Acceptance of any improper delivery does not prejudice the Buyer's right to demand adequate assurance of future performance.
- 3) When, after receipt of such a demand, the Seller has failed to provide within a reasonable time not exceeding seven (7) days such assurance of due performance as is adequate under the circumstances of the particular case, the Buyer may by written notice to the Seller terminate the Purchasing Terms and Conditions, in whole or in part, without any liability to the Seller, and may, without prejudice and in addition to any other rights or remedies which it may have hereunder or at law, return part or all of any shipment of the Goods delivered prior to the date of such termination at the Seller's cost. Sub-Clause 2) hereof shall be applicable in case of the above termination.

FORCE MAJEURE

- 1) "Force Majeure" means unforeseeable and unavoidable causes beyond the control of the Seller and/or the Buyer and without fault or negligence of the Seller and/or the Buyer.
- 2) Should Force Majeure prevent the total or partial performance required under the Purchasing Terms and Conditions and / or its underlying Purchase Agreement(s), the party claiming Force Majeure shall advise the other party of the beginning and the expected period of such Force Majeure with reasonable evidence within ten (10) days after the occurrence of Force Majeure and furnish the other party with convincing evidence, such as official certificate from competent authorities substantiating the occurrence and nature of the alleged contingencies, within seven (7) days after the end thereof.
- 3) In the event a condition of Force Majeure is declared and substantiated as set forth in paragraph 2), the parties shall consult with each other to extend the delivery date of the Goods; however, such delivery date shall not be extended beyond thirty (30) days from the delivery date set forth in the Purchase Agreement. For delays and/or non-performance of the obligations due to Force Majeure, neither party shall be entitled to penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure.
- 4) In the event that the delay and/or non-performance of the obligations exceeds thirty (30) days due to Force Majeure, the Buyer, without any obligation to pay any termination charge, shall be entitled to terminate the contract by so notifying the Seller in writing.

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WAIVER AND REMEDIES


- 1) The failure of the Buyer to enforce any provisions of the Purchasing Terms and Conditions shall in no way be construed as a waiver of such provisions nor in any way affect the right of the Buyer thereafter to enforce any such provisions. No waiver by the Buyer of any default of the Seller hereunder shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature.
- 2) The rights and remedies herein reserved to the Buyer are cumulative and in addition to any other or further rights available at the applicable laws.

INDEMNITY

The Seller shall defend, indemnify and hold harmless the Buyer, its employees, and its agents from and against any and all losses, costs, damages, consequential or special damages, expenses (including expenses and fees of attorneys), claims and legal actions, whether groundless or not, including any and all claims for personal injuries or death , damage to or loss of property, arising out of the breach by the Seller of any of the terms contained herein or under the Purchase Agreement, the failure by the Seller to perform any of its obligations hereunder or under the Purchase Agreement or any act or omission or negligent work of the Seller or its employees, agents or subcontractors in connection with performing any work relating to the Purchase Agreement. The Seller also shall defend, indemnify and hold harmless the Buyer, its employees, and its agents from and against any and all losses, costs, damages, expenses (including expenses and fees of attorneys), claims and legal actions, whether groundless or not, including any and all claims for personal injuries or death, damage to or loss of property, consequential or special damages, in connection with any product liability action or claim wherein it is alleged that the Goods were defective in design, manufacture, repair and/or instructions.

SECRECY

- 1) The Specifications and any other drawings, designs, technical data and other information (written or not) furnished by the Buyer to the Seller shall be treated as confidential, shall be used exclusively for the purpose of performing of the Purchase Agreement, shall not be disclosed or reproduced in whole or in part for any other purpose and shall be returned to the Buyer upon completion of the Purchase Agreement or whenever the Buyer so demands.
- 2) The secrecy obligation stipulated herein shall remain forever in full force and effect even after the Seller's completion of the relevant Purchase Agreement.

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- 3) The requirements of paragraph 1) and 2) of this Clause shall be obeyed by the Seller's sub-contractor under the Seller's responsibility.
- 4) The requirements of paragraph 1) of this Clause shall not apply to any specifications or other drawings, designs, technical data or other information that the Seller demonstrates, promptly after their receipt from the Buyer and to the Buyer's satisfaction, are in the public domain or are already in the lawful possession of the Seller.

PATENTS, TRADEMARKS, TRADE NAMES AND COPYRIGHTS

- 1) The Seller shall defend, indemnify and hold harmless the Buyer from any and all claims, actions, damages, losses and expenses, including attorney's fees, arising from any claim that the Goods (or any part of the Goods or process related to the Goods) purchased by the Buyer from the Seller infringe or allegedly infringe on any patent, trademark, copyright, trade secret or similar intellectual property right.
- 2) In the event the Buyer is enjoined from the possession or use of the Goods in connection with any said claim, the Seller at its sole expense shall take all reasonable steps to procure for the Buyer the right to possess and use the Goods (or any part of the Goods or process related to the Goods). If the Seller cannot promptly obtain such a right, the Seller shall at its sole expense and in accordance with the instructions of the Buyer either:
 - (a) modify the Goods so as to avoid infringement of any intellectual property right with substantially equal quality to the satisfaction of the Buyer, or
 - (b) replace the Goods with substantially equal Goods that do not infringe or violate any intellectual property right. In addition, the Seller shall reimburse the Buyer for any and all damages incurred by the Buyer as a result of being enjoined from the possession or use of the Goods.
- 3) The Seller may, with the Buyer's prior written consent, rightfully apply any patent or similar right to which the Seller becomes entitled during the course of manufacturing the Goods. In such event, the Seller shall grant to the Buyer a non-exclusive and royalty-free license to manufacture, use and/or sell in accordance with the patent or other similar property right as long as its registration is lawfully maintained.

COMPLIANCE

- 1) The Seller warrants all the Goods and the Specifications (and any part thereof) shall be in strict compliance with all applicable laws, regulations, orders or by-laws of any local or national authority having the force of law in the country where the Goods or the Specifications, or any part thereof, are to be manufactured, exported, including

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applicable export/re-export control laws, guidelines and/or regulations such as (but not limited) Export Administration Regulations of the United States.

- 2) The Seller shall be responsible for obtaining approvals, licenses, permits or authorization in a timely fashion from the competent authorities necessary for the exportation of the Goods (and, as the case may be, the Specifications and any other drawings, technical data, technologies and information) to the country of destination.
- 3) In the event that the Goods or the Specifications or any part thereof are, or are likely to be, subject to any restriction arising from such applicable laws, regulations or otherwise as stated herein above, the Seller shall so notify the buyer and shall, at its cost, take any and all necessary actions to ensure the strict compliance with the same.
- 4) The Seller warrants all the Goods and the Specifications (and any part thereof) shall be in strict compliance with all applicable laws, regulations, orders or by-laws of any local or national authority having the force of law in the country where the Goods are placed in operation including but not limited to safety, fire protection and structure. In addition, the Seller shall comply with the safety requirement specified in the Purchase Agreement and/or the Specifications.
- 5) The Seller shall submit all the documents necessary to comply with the requirement described in this Clause.

DISPUTES


All disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Purchasing Terms and Conditions and / or Purchase Agreement(s), or breach thereof shall be exclusively settled by the competent court of Amsterdam, the Netherlands. Seller agrees to continue production during any such dispute at the Buyer's sole election.

GOVERNING LAW

The Purchasing Terms and Conditions and its underlying Purchase Agreement(s) shall be governed by and construed in accordance with the laws of the Netherlands and the applicability of the United Nations Convention On Contracts For The International Sale Of Goods, 1980 (CISG) is hereby explicitly excluded.

ASSIGNMENT

The Seller shall not assign or transfer the Purchasing Terms and Conditions or any part of it, to any third party without prior written approval by the Buyer. Any such approval shall not relieve the Seller of any of its obligations under the Purchasing Terms and Conditions.

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LANGUAGE

The language to be used in all documents comprising or relating to the Purchasing Terms and Conditions, and in all other communications relating to the Purchasing Terms and Conditions shall be in English, unless otherwise stated in the Purchase Agreement.

PUBLICITY

The Seller shall not issue any news release nor permit any publicity or advertisement concerning the Purchasing Terms and Conditions without the Buyer's prior written approval.

SUBCONTRACTING

The Seller shall not subcontract all or any substantial portion of its obligations under the Purchasing Terms and Conditions without prior written approval of the Buyer. Upon the Buyer's request, the Seller shall, submit the Seller's complete subcontractors' list for the Buyer's approval. The subcontractors' list shall include of the name and scope of work of each subcontractor. The Buyer's approval or disapproval of the Seller's subcontractors shall not relieve the Seller of any of its obligations under the Purchasing Terms and Conditions.

QUANTITY FORECAST

From time to time as required by the Purchasing Terms and Conditions and/or upon Seller's request, the Buyer may provide the Seller with forecasts of required quantities and/or required delivery dates of the Goods ("Quantity Forecast"). However, such Quantity Forecasts are provided for informational purposes, and only to facilitate the on-time delivery of Goods under future Purchase Agreements. In no way will the Buyer be obligated, or limited, by Quantity Forecasts. Seller acknowledges that these Quantity Forecasts are based on a number of economic and business factors, variables and assumptions which may change over time and may or may not be accurate at the time made or thereafter. Buyer is required to purchase only the Goods that are specified in, and delivered in accordance with specific Purchase Agreements falling under the Purchasing Terms and Conditions.