

PURCHASE ORDER TERMS AND CONDITIONS OF PURCHASE

1. **Priority.** Any purchase of Goods and/or Services by Buyer from Seller is subject to the following terms and conditions: (1) any written agreement signed by both parties regarding the Goods and/or Services, (2) any Riders incorporated by reference or attached to the Purchase Order, (3) all terms and conditions listed below and on the purchase order or scheduling agreement, quantity contract or dollar contract (hereinafter referred to as the "Purchase Order"), including other documents incorporated by reference by Buyer on the Purchase Order, and (4) all specifications and drawings accepted or approved in writing by Buyer. Collectively and separately, the documents listed above shall be referred to as the "Agreement." Notwithstanding the foregoing, any Seller's terms and conditions are hereby expressly excluded from the Agreement. Buyer's documents or agreements comprising the Agreement are intended to be complementary. If there is a conflict or inconsistency between the Agreement documents, the order set forth above shall govern such conflict inconsistency.

2. **Definitions.** The term "Buyer" means the entity identified as Buyer on the face hereof or its duly authorized representative. The term "Seller" means the person or entity selling Goods and/or Services hereunder. The term "Goods" means the goods, equipment, materials, Work Product (defined in applicable Rider) or other deliverables listed on the Purchase Order or developed in connection therewith. The term "Services" means the services to be performed by Seller pursuant to this Purchase Order or developed in connection therewith. "Rider or Rider(s)" shall mean the document(s) that contain additional terms and conditions related to the performance of Services or delivery of Goods. "Samples," "Buyer's Property," and "Instructions" are defined in the applicable Rider. To the extent this Purchase Order is for the performance of Services, the Bercen Services Rider located at <http://bercen.com/services-rider> is hereby incorporated by reference and made a part hereof.

3. **Acceptance.** Seller's written acceptance or commencement of any performance pursuant to this Purchase Order shall constitute Seller's acceptance of all Agreement terms and conditions. BUYER OBJECTS TO, AND REJECTS, ALL TERMS OR CONDITIONS PROPOSED BY SELLER IN CONNECTION WITH ANY QUOTATION, ORDER ACKNOWLEDGMENT, INVOICE, PACKAGING OR OTHERWISE, WHICH CONFLICT WITH OR ARE IN ADDITION TO ANY OF THE PROVISIONS HEREOF, AND SUCH TERMS OR CONDITIONS SHALL NOT BECOME A PART OF THE TERMS AND CONDITIONS THAT CONTROL THE RELATIONSHIP BETWEEN BUYER AND SELLER. If this Purchase Order is deemed to be an acceptance of a prior offer by Seller, such acceptance is conditional on Seller's assent and acceptance to all additional or different terms or conditions contained in this Purchase Order. No modification of the Agreement terms and conditions shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.

4. **Shipment.** Notice of shipment of Goods shall be couriered, faxed or emailed to Buyer on the same day that the Goods are shipped and Seller shall provide Purchase Order number, quantity, description of Goods, mode of transportation and the identification number (e.g. car or container number). Seller shall not charge any premium delivery charge unless it is approved by Buyer prior to shipment of the Goods.

5. **Delivery; Risk of Loss.** TIME IS OF THE ESSENCE. Seller acknowledges that Buyer has strict requirements as to scheduled delivery dates for Goods and performance dates for Services which are essential to Buyer's business. Deliveries must be made in accordance with the requirements of the Purchase Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Unless otherwise specified, all Goods shall be sold DDP Buyer's designated facility (INCOTERMS 2010) with shipment of the Goods to commence upon Buyer's approval. Unless otherwise agreed to by Buyer and expressly stated on the Purchase Order, all expenses (including customs duty, taxes and other charges) and risk of loss for damage incurred in the transportation of the Goods, including loss during loading or unloading, shall be borne solely by Seller and shall not pass to Buyer until delivery of Goods and after Buyer has inspected and accepted the Goods. If specified on the Purchase Order, the Goods shall be tendered in a single delivery. At Buyer's request, Seller shall provide Buyer with a shipment schedule.

6. **Packing.** All packaging shall be clearly marked with Purchase Order number, gross, tare and net weights. Seller shall package and label the Goods in accordance with all applicable customs, safety and other applicable regulatory requirements, and such that they will arrive undamaged and in such a condition as to permit easy handling and unloading and 6 months' storage under normal conditions without detrimental effects. No charges will be paid by Buyer for boxing, crating, demurrage, packing, or storage of Goods unless expressly stated on the Purchase Order or agreed to in writing by Buyer. A packing slip must be enclosed in all shipments of Goods showing Purchase Order number and exact quantity or weight and description of Goods shipped. If Goods are not accompanied by a proper packing slip, Buyer's count or weight shall be conclusive.

7. **Inspection; Rejection.** All delivered Goods are subject to Buyer's rights of inspection and rejection. Buyer may, at its option, retain all or some part of such Goods. Any rejected Goods may be returned within a reasonable time to Seller at Seller's expense, including all storage, transportation, duties, labor and other charges and expenses paid by Buyer. All rejected Goods shall be subject to Seller's risk and liability. No replacement of rejected Goods may be made without Buyer's prior consent. Seller shall refund to Buyer all monies paid to Seller for rejected Goods. Payment for non-conforming Goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. Seller shall remedy any defect or non-conformity and shall pay for any damages or injury suffered by Buyer resulting therefrom. Buyer and its representatives shall at all times have the right to inspect Goods and Seller's performance of the Services. Neither Buyer's inspection nor failure to inspect shall relieve Seller of any obligation under the Agreement.

8. **Price.** All prices are firm and complete, and unless otherwise specified, are in U.S. dollars. Seller certifies that the prices being charged under the Purchase Order are not higher than prices being charged to other purchasers of similar goods and services at similar volumes. If Seller's prices for similar goods and/or services are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone at any time prior to shipment), Seller shall reduce the price for the Goods and/or Services, and Buyer will be billed at such reduced prices. Buyer reserves the right to change quantities, specifications and delivery dates. Price differences resulting from such changes shall be adjusted by Buyer and Seller shall proceed without delay with its performance.

9. **Taxes.** Unless expressly stated on the Purchase Order or agreed to in writing by Buyer, any and all taxes, including but not limited to any federal, national, provincial, state, and/or local sales taxes, value added taxes (VAT), goods and services taxes (GST), employment taxes, unemployment compensation, withholding and social security taxes that are now or shall hereafter be levied upon Seller or its subcontractors, fees, import duties

and/or stamp taxes are to be paid and assumed by Seller, and Seller shall indemnify Buyer against such liability. Seller shall accept any valid sales or use tax exemption certificates.

10. **Payment.** Payment terms shall be specified on the Purchase Order. No invoice shall be issued prior to delivery of Goods and/or Services or by any party other than Seller. Payment due dates and discount deadlines shall not begin until correct and complete invoices are received by Buyer. Payment is deemed to be made for purposes of earning a discount on the date of mailing of Buyer's payment. The Purchase Order number must be included on all invoices, otherwise such invoice may be returned and payment delayed. Neither the final payment nor any part thereof shall become due until: (1) Seller has fulfilled to Buyer's satisfaction Seller's obligations under the Agreement; and, (2) Seller has delivered to Buyer a complete release of all liens and claims from Seller and all subcontractors, materialmen and equipment and material suppliers arising out of the Agreement, in a form satisfactory to Buyer. No liens shall be placed on Buyer's real or personal property by Seller or Seller's agent. If liens or claims are filed on the Goods, Buyer may withhold any payment until such lien or claim is removed or otherwise covered by Seller to the satisfaction of Buyer.

11. **Cancel; Termination.** Buyer may cancel all or part of the Purchase Order, without incurring any liability from Seller, if Seller (a) fails to timely perform Services or deliver Goods, (b) repudiates or breaches any term or condition of the Agreement and fails to cure such breach within five (5) days after delivery of written notice to Seller specifying such breach, or (c) becomes insolvent, makes an assignment for the benefit of creditors, is the subject of a proceeding for the appointment of a receiver or trustee, or files a voluntary petition in bankruptcy or is the subject of an involuntary petition in bankruptcy. Buyer reserves the right to terminate the Agreement for the sole convenience of Buyer, at any time prior to shipment of Goods or delivery of Services, in which event Seller shall be entitled to the actual incurred costs evidenced by written documentation submitted to Buyer. In addition to its other rights herein, if Seller fails to perform or complete the Services or delivery of the Goods in accordance with the Agreement, Buyer may, without prejudice to any other remedy hereunder, perform or contract for the performance of the Services or delivery of the Goods and may deduct the cost thereof from any payment then or thereafter due to Seller.

12. **Intellectual Property.** To the extent that any intellectual property rights are used and/or embodied in the Goods and/or Services, Seller grants Buyer a worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license: (a) to make, use, sell, manufacture and cause to be manufactured products embodying any and all Goods' and/or Services' intellectual property, (b) to repair, rebuild or relocate and to have repaired, rebuilt or relocated the Goods; and, (c) to use, sell, copy, distribute, create derivative works, display, and sublicense the Goods' and/or Services' intellectual property in connection with Buyer's products and services. Seller hereby represents and warrants to Buyer that neither the manufacture and sale nor the use, reproduction, or distribution of Goods and/or Services will in any way infringe or misappropriate any intellectual property right. All information designs and items developed by Seller for experimental, development or research work performed for Buyer shall be the property of Buyer upon payment for such work.

13. **Representations and Warranty.** Seller represents and warrants that all Goods and Services, as the case may be, are: (a) owned by Seller or Seller has the right to transfer free and clear title to Buyer, (b) free from defects in materials, design and workmanship, (c) in good working order and condition (d) in strict conformance to the specifications, drawings or descriptions, or Samples, Instructions, performance capabilities and other standards Buyer provides to Seller, (e) do not infringe, violate or misappropriate any patent, copyright or other intellectual property rights; and, (f) the manufacture, production, installation, sale and use by Buyer are in compliance with any and all applicable laws, rules and regulations. Seller knows of Buyer's intended use and expressly warrants that all Goods and Services covered by the Agreement will be fit and sufficient for the purposes intended by Buyer. Statements of Seller, or its agents in its advertising and its promotional material as to quality, grade, performance and use of the Goods and/or Services are Seller's express warranties. All warranties survive any inspection, delivery or acceptance of the Goods and/or Services, or payment for the Goods and/or Services delivered and such warranty shall run to Buyer, Buyer's customers and/or Buyer's successors and assigns, and shall not be deemed exclusive of any other warranties, express or implied. In the event that Buyer is in any way enjoined from using the Goods or any portion thereof, Seller shall promptly, at its expense (including, but not limited to, the payment of any royalties occasioned by the following) either: (a) provide to Buyer non-infringing means of using it; (b) negotiate and procure for Buyer the right to use it without restriction; or, (c) if neither (a) nor (b) can be accomplished within a reasonable time period, reimburse Buyer for all monies paid for it. Seller will comply with the Supplier Code of Conduct located at <http://www.Bercen.com/supplier-code-of-conduct>.

13. **Manufacturer's Warranties.** In addition to the warranties granted by Seller in the Agreement, if Seller is not the original manufacturer of Goods or source of Services, Seller shall pass through, assign, transfer and convey to Buyer all warranties related thereto provided by the manufacturer and/or supplier, to the extent that Seller has the legal capacity to do so. If the manufacturer's or supplier's warranties are for a period greater than Seller's warranty to Buyer as otherwise provided in this Agreement, then Seller shall warrant the same to Buyer to the extent and for the duration of such manufacturer's or supplier's warranty.

14. **Indemnification.** Seller hereby does RELEASE and shall INDEMNIFY and HOLD HARMLESS Buyer, its owners, divisions, affiliated or related companies, and their successors, assigns, directors, officers, employees, representatives and agents ("Indemnitees"), and at any Indemnitee's option, DEFEND, from and against any and all claims, actions, damages, awards, judgments and expenses, including reasonable attorney fees and incidental, special and consequential damages ("Claims"), arising or alleged to arise from (a) any actual or alleged infringement, violation or misappropriation of any intellectual property rights, (b) any actual or alleged deficiencies or defects in the Goods and/or Services, whether latent or patent, (c) any violation by Seller of any law, rule, regulation or governmental or administrative order, (d) Seller's breach of any terms or conditions in the Agreement, or (e) the acts or omissions of Seller, irrespective of whether such Claim is caused, or alleged to be caused, in whole or in part by Buyer and regardless of the legal theory upon which the Claim is asserted. THIS INDEMNITY SHALL BE BROADLY CONSTRUED, SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW, AND SHALL APPLY REGARDLESS OF WHETHER IT IS ALLEGED THAT THE INDEMNITEES OR SELLER WERE SOLELY NEGLIGENT, THAT THE INDEMNITEES AND SELLER WERE JOINTLY NEGLIGENT, OR OTHERWISE. The rights of indemnification contained herein shall survive cancellation or termination of this Purchase Order and/or delivery of Goods or completion of Services. Seller will defend any suits which may be brought for infringement by reason of the use of any property, design, divide, material or process by Seller or Buyer.

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15. Remedies; Waiver. In the event that there is a breach by Seller of the Agreement, Buyer shall have the right, among others, to (a) cancel the Purchase Order, in part or whole, (b) return all or part of Goods at Seller's expense (including but not limited to, transportation and insurance costs) or reject the Services, (c) receive reimbursement for payments made by Buyer, and (d) recover all damages suffered by Buyer (including, but not limited to, cost of replacing Goods and/or Services, additional manufacturing costs and import duties and/or special or consequential damages). All rights and remedies of Buyer shall be non-exclusive and cumulative and may be exercised singly or concurrently by Buyer in its sole discretion. If Buyer has any claim against Seller, it may set-off the amount of such claim against any amounts due or becoming due hereunder.

16. Liability Limitation. IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED OR LOST PROFITS, BUSINESS INTERRUPTION OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT, SHALL BUYER BE LIABLE FOR DAMAGE, LOSS, THEFT OR INJURY TO SELLER'S PROPERTY AT BUYER'S FACILITY. BUYER'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL BE LIMITED TO THE PRICE ALLOCABLE TO THE GOODS AND/OR SERVICES OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM. Any action by Seller arising out of or relating to the Agreement must be commenced by Seller within one (1) year after the cause of action has occurred.

17. Compliance with Laws. The Agreement incorporates by reference, and Seller shall comply with, all applicable laws, rules, regulations, ordinances and executive orders of any governmental authority of any nation (or agency or subdivision thereof) ("Laws") related in any way to the Goods and/or Services to be provided hereunder and Seller represents that all Goods and/or Services to be provided hereunder have been manufactured, imported and exported, marked, and otherwise provided in accordance with Laws (including but not limited to Regulation (EC) No. 1907/2006, commonly known as "REACH," if applicable). Permits and licenses necessary for the performance of the Services or delivery of Goods shall be secured and paid for by Seller. If Seller supplies any Goods or Services in violation of the above, Buyer may require Seller, without prejudice to any other rights in may have to modify or replace such Goods or Services at Seller's sole cost. In the event that Buyer requires additional information respecting the Goods and/or Services respecting Buyer's compliance with laws, Seller undertakes to provide such information to Buyer and Buyer agrees to limit its use of such information for such compliance purposes.

18. Assignments. Seller shall not assign, delegate or subcontract any interest in or right or obligation under the Agreement without Buyer's prior written consent. Buyer may assign, delegate or subcontract any interest in or right or obligation under the Agreement.

19. Waiver. Failure of Buyer to enforce at any time any provisions of the Agreement, irrespective of any previous action or proceeding taken by it, shall in no way be considered (a) to waive such provisions, (b) to affect the validity of the Agreement, or (c) to preclude or prejudice Buyer from exercising the same or any other rights it may have hereunder. Acceptance or payment for all or any part of the Goods and/or Services shall not be a waiver of any of Buyer's rights under the Agreement.

20. Site Condition. Buyer's sites are industrial chemical manufacturing facilities. Seller shall avoid contact with Buyer's chemicals and equipment and with chemicals or residue that may be in or on the ground in either liquid or solid form when at Buyer's site(s). Buyer has material safety data sheets for Seller's reference. Seller is solely responsible for ensuring that all necessary and appropriate safety, training and procedural precautions are

taken by Seller and Seller's agents. In the event of any incident of injury or illness involving Seller or Seller's agents, Seller shall promptly notify Buyer and shall, upon Buyer's request, provide Buyer with access to all files, records and reports relating to such incident in Seller's custody or control. Access to Buyer's site to perform Services and/or deliver Goods must be authorized by appropriate Buyer's personnel.

21. Materials. All materials used by Seller in connection with the Services or embodied in the Goods shall be of good quality and free from defects in material and workmanship and shall strictly conform to the specifications agreed to in writing or provided by Buyer. Except as otherwise expressly provided for the Purchase Order, Seller shall provide and pay for all materials, labor, tools, equipment, deliverables, utilities, transportation and other facilities necessary for the execution and completion of Services and delivery of Goods. The Seller shall furnish to Buyer evidence as to the kind and quality of materials used by Seller.

22. Management. Buyer may, in its discretion, dismiss from performance of Services under the Agreement or delivery of Goods any personnel of Seller, including, but not limited to, employees and independent contractors ("Personnel"), for any reason satisfactory to Buyer. The Seller's Personnel shall be subject to and must comply with Buyer's procedures and policies, including, but not limited to, executing Buyer's waiver and release documents that will waive Buyer's liabilities in the event of an accident at Buyer's facilities. Buyer requests that Seller adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis, regardless of an individual's age, race, color, sex, religion, national origin, disability or other protected status.

23. Insurance. Seller shall maintain comprehensive general liability insurance in an amount not less than U.S. \$2 million per occurrence and other insurance in sufficient amounts that Buyer deems adequate to cover the obligations set forth in this Purchase Order, and upon Buyer's request will provide evidence thereof.

24. Governing Law. Unless otherwise provided in the Agreement, this order shall be governed by the law of the jurisdiction from which this purchase order originated, notwithstanding any country or state's choice of law rules. SELLER IRREVOCABLY CONSENTS TO THE JURISDICTION AND VENUE OF THE COURTS OF THAT JURISDICTION. The United Nations Convention on contracts for the International Sale of Goods shall not apply.

25. Force Majeure. In the event of strikes or similar labor problems, wars, terrorist acts, any governmental action or inaction (whether valid or invalid), fires, explosions, or other similar occurrences, Buyer, at its option, without penalty or liability, may (a) suspend or cancel the Purchase Order, (b) reduce its purchases from Seller, or (c) have Seller provide the Goods and/or Services from other sources in quantities and at times requested by Buyer and at the price set forth in this Purchase Order.

26. Severability. The Agreement constitutes the entire agreement between Seller and Buyer relating to the sale and purchase of Goods and/or Services under the Purchase Order. The parties agree that the provisions of the Agreement are reasonable and enforceable; however, they are severable. If any provision of the Agreement is unenforceable, the remaining provisions of the Agreement will remain in full of force and effect. Nothing in this Section or in any other provision of the Agreement shall, or is intended to, limit any other rights or remedies either party may have by virtue of the Agreement or otherwise.