

**STANDARD PURCHASE ORDER TERMS AND CONDITIONS OF  
SURTECO NORTH AMERICA, INC., A DIVISION OF SURTECO GROUP SE**

**1. General Terms and Conditions.**

Unless otherwise provided in a written agreement between SURTECO North America, Inc., a Delaware corporation ("SURTECO") and the seller ("Seller"), the terms and conditions set forth in this document are intended to establish standard terms and conditions of purchase for all purchases of all Products and Work by SURTECO from Seller, and all such purchases are made expressly conditional upon these terms and conditions. For purposes of this Agreement: (a) "Products" mean all materials, equipment, supplies and other goods intended for Seller to provide under this Agreement; and (b) "Work" means all services, labor, data, and other obligations intended for Seller to perform or supply under this Agreement, as specified in the work scope, together with miscellaneous expendable job supplies, installation related equipment, tools, transportation, and facilities necessary for the performance of Seller's obligations under this Agreement. This document, together with the purchase orders, specifications, and all supplements and attachments thereto issued by SURTECO from time to time, shall constitute the entire agreement ("Agreement") between SURTECO and Seller for each such purchase. In the event of any inconsistency between these terms and conditions of purchase and the provisions on the purchase order or on any supplement attached thereto, the provisions contained on the purchase order or on such supplement shall control. Seller's acknowledgement, commencement of performance to furnish the Products or any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of the Agreement and all of its terms and conditions. When accepted by Seller this Agreement shall constitute a binding contract between SURTECO and Seller containing the terms and conditions set forth herein. Additional or different terms provided in Seller's acceptance of SURTECO's offer which vary in any degree from any of the terms herein are hereby objected to and rejected.

**2. Warranties and Inspection.**

Seller expressly warrants: (a) that the Products sold hereunder will conform to contract specifications, drawings, samples, or other descriptions furnished to SURTECO by Seller, and will be of good design, material, and workmanship, free from defect, merchantable, and will satisfactorily perform the functions for which intended and fit for their intended use, and will be free and clear of all liens, claims, pledges, charges and encumbrances; and (b) to perform the Work in a good and workmanlike manner, and in accordance with good industry practices. Seller shall furnish all materials, equipment, tools, labor, supervision, supplies, facilities, services and transportation necessary for the successful completion of the Work. Seller shall cooperate, consult, and coordinate with SURTECO in the performance of the Work, and shall provide such Work in a timely manner compatible with SURTECO's schedule. Seller shall, prior to the start of the Work, provide to SURTECO a schedule describing its plan of operation for the Work and all testing and deliverables of Seller hereunder. Said warranties, however, shall not be deemed to limit any warranties or representations of additional scope given to SURTECO from Seller or any warranties implied by law. Seller agrees that all of its warranties shall survive acceptance of and payment for the Products and/or Work and shall inure to the benefit of SURTECO, and to all subsequent SURTECOs of the Products or users of the Work.

SURTECO reserves the right at any time to inspect and/or test Products and/or the Work. Such inspection and/or testing shall not imply any acceptance of the Products or Work nor in any way relieve the Seller of any obligation or duty under the Agreement or otherwise impose any obligations on SURTECO. Seller shall test the Products to ensure that they meet with the applicable specifications and acceptance criteria and Seller shall not ship any Products that do not conform thereto. Each shipment must be accompanied by Seller's completed Quality Control Inspection Report, Certificate of Analysis or similar documents requested by SURTECO. Seller shall provide and maintain a test and inspection system acceptable to SURTECO and in conformity with industry standards. Records of all testing work by Seller shall be kept complete and available to SURTECO and its customers during the performance hereof and for three years after final payment by SURTECO or for such longer period as may be specified. At all reasonable times during the period of Seller's performance, including the period of manufacture, SURTECO and its customers may enter any manufacturing plant, warehouse, or other premises under Seller's control to inspect and/or test the Products to be furnished hereunder and to inspect processes, tools, and materials used by Seller to perform hereunder.

Unless otherwise specified, all Products and Work will be subject to final inspection and acceptance at SURTECO's plant. Payment by SURTECO prior to final inspection and acceptance shall not constitute acceptance. SURTECO may at its option hold rejected Products for Seller's instructions and at Seller's risk, or return them to Seller at Seller's expense. If any Products or Work do not comply with the warranties set forth in this Section 2, SURTECO may, at its sole option, and in each case at Seller's sole expense: (i) reject such Products or Work; (ii) require Seller to repair or correct such Products or Work as necessary to render them in conformance with the foregoing warranties, and consistent with SURTECO's time schedule; (iii) return such Products or Work and receive a full refund of the contract price; or (iv) make any corrections required to cause such Products or Work to fulfill the foregoing warranties and charge Seller for the costs incurred by SURTECO thereby. Seller shall reimburse SURTECO for all expenses reasonably incurred by SURTECO in connection with a breach of the foregoing warranties (including transportation, storage, administrative, and other incidental expenses of SURTECO). No replacement of rejected Products or Work may be made by Seller without written authorization from SURTECO. Payment by SURTECO to Seller for non-conforming Product shall not constitute an acceptance thereof, limit or impair SURTECO's rights to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. The remedies set forth in this Agreement are cumulative, and shall not preclude any other remedy available to SURTECO at law or in equity.

**3. Delivery.**

Time is of the essence for this Agreement. Failure to tender conforming Products or Work by the delivery date specified herein shall constitute a breach by Seller, and Seller shall have no right to make a later conforming tender except upon prior written authorization of SURTECO. If Seller's deliveries are behind the agreed upon schedule, Seller shall provide SURTECO with all available information regarding the reasons for such delay. Such notice shall not constitute a waiver by SURTECO of any of Seller's obligations hereunder. In the event of failure to deliver material of the quality or within the time specified, SURTECO may: (i) elect to have further deliveries made by express shipments and Seller shall bear the

difference between freight and express shipping rates; (ii) buy elsewhere and charge Seller with the resulting loss, unless deferred shipment is agreed upon in writing; or (iii) terminate the Agreement or specific purchase order by providing written notice to Seller that is effective when received by Seller as to stated Products not yet shipped or Work not yet rendered. Failure of SURTECO to exercise this option with respect to any installment shall not be deemed a waiver with respect to future installments, if any. Seller shall not deliver any Products or Work in advance of the schedule set forth in any given purchase order without SURTECO's written permission. SURTECO reserves the right to return, at Seller's expense, all Products received by SURTECO in advance of the schedule of a given purchase order.

#### **4. Packaging and Shipment.**

Seller agrees to (a) properly pack, identify, label, and ship Products in accordance with the requirements of SURTECO; (b) make only those charges for handling, packaging, storage or transportation of Products as expressly permitted by the relevant purchase order; and (c) promptly forward the full set of original copies of bills of lading and/or other shipping documents for each shipment to SURTECO. Such bills of lading or shipping documents shall include correct classification and identification of the Products shipped in accordance with the applicable carrier's and/or governmental requirements, as well as OMONVA's packaging and shipping instructions. No charge will be allowed for packing or shipping unless designated by SURTECO on the purchase order. Shipments will be packaged to secure the lowest transportation costs. Orders not accompanied by packing lists will be conclusively deemed in the amount of SURTECO's count or weight. Unless otherwise stipulated on the face of a purchase order or by SURTECO in writing domestic orders shall be priced and shipped "FOB destination," and international orders shall be priced and shipped "DDP destination." Risk of loss and title to the Products and Work shall pass to SURTECO only upon delivery to SURTECO's specified end destination. All shipping terms shall have meaning set forth in the Uniform Commercial Code for domestic sales or in INCOTERMS™ 2010, as published by the International Chamber of Commerce, for international sales. Seller shall be liable for any additional cost incurred by SURTECO and for any loss or damage to the Products resulting from failure to comply with OMNVOA's packaging and shipping instructions. Prepaid transportation charges on Seller's invoice must be supported by a paid freight bill or equivalent net of any rebate or similar item received or to be received by Seller.

#### **5. Prices, Invoices, and Statements.**

The contract price or unit prices stated in the purchase order represent the fixed, full amount payable by SURTECO under this Agreement. Unless otherwise specified in the purchase order, no additional charge will be allowed for labor, supervision, equipment, materials, supplies, tools, field and office overhead, facilities, utilities, services, transportation, packaging, cartage, and any other of Seller's costs. Seller warrants that its prices hereunder are no higher than prices charged by it for the same or similar items and quantities to any other SURTECO. If a price is omitted from a purchase order, the Products or Work will be billed at the lower of: (a) the price last quoted to SURTECO; (b) the price last paid by SURTECO; or (c) the prevailing market price. Unless otherwise specified, all prices are FOB the location set forth in the purchase order and include all charges for packaging, handling, storage and delivery. Seller will pay all delivery charges in excess of the delivery charges which SURTECO has agreed in writing to pay. If payment terms are not specified in the purchase order then all payments under the purchase order to Seller shall be paid to Seller in United States dollars not later than sixty (60) days following the later of: (i) the delivery date; (ii) the date of SURTECO's acceptance of all of the products and/or services under the purchase order; or (iii) SURTECO's receipt of a properly prepared invoice. Seller shall pay, without charge to SURTECO, any federal, state or local tax or other government charge or assessment relating to the production, sale or shipment of any of the Products or Work. Any value added tax shall be shown separately on all invoices. Seller agrees to accept and use tax exemption certificates when furnished by SURTECO. Federal Excise Tax, if applicable, must be shown separately on invoice. If SURTECO is offered Products of Work of equal quality and in quantities equal to or less than those remaining for delivery at a delivered cost lower than that then in effect under the purchase order, and gives Seller notice thereof, Seller shall either reduce its price to such lower delivered cost within 10 days after its receipt of such notice or permit SURTECO to purchase elsewhere at such lower price while it remains effective. The quantity so purchased shall be deducted from the undelivered portion of a purchase order. If, at any time during the term of Seller's performance under a purchase order, Seller should sell to any other customer goods or services of at least equal quality at a price lower than that in effect hereunder, SURTECO shall receive the benefit of the lower price on all deliveries of product which are made during the period when such lower price is in effect. In the event of any violation by the Seller of any provision of a purchase order, or in the event of the assertion by any third parties of any claim or lien against SURTECO or its property arising out of Seller's performance under a purchase order, SURTECO shall have the right to retain out of any payments due to Seller or that become due to Seller an amount sufficient to protect SURTECO completely from any loss, damage or expense therefore, until the situation has been satisfactorily remedied by Seller.

SURTECO shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. Seller shall keep records of all charges, disbursements, and expenses incurred by it hereunder, and its compliance with laws regulating employee benefits, quality assurance, environmental and safety activities. All invoices received after the 25th of any month will be audited and considered for payment with invoices of the month following. Payment of invoices to obtain discounts shall not constitute a release of Seller from any of Seller's obligations hereunder. Any discount terms provided herein shall date from either the date of delivery at destination or the date of mailing of invoice, whichever is later.

#### **6. Changes.**

SURTECO may, at any time, by a written order, make changes in any one or more of the following: (a) designs or specifications, where the Products to be furnished are to be specially manufactured for SURTECO in accordance with the Agreement; (b) method of shipment and packing; (c) place or time of inspection, delivery or acceptance; and (d) the amount of any SURTECO furnished property.

If any of such changes causes an increase or decrease in the cost of and/or time required for performance of the Agreement, an equitable adjustment shall be made in the price or delivery schedule or both. No claim by Seller for adjustment shall be allowed unless made in writing to SURTECO

within ten (10) days from the date notice of any such change is received by Seller. If the cost of property rendered obsolete or excess as the result of a change is included in Seller's claim for adjustment, SURTECO will have the right to take title thereto and prescribe the manner of disposition thereof. Nothing in this Section shall excuse Seller from proceeding with performance of the Agreement or a given purchase order as changed. No price increase or extension of time for delivery shall be binding on SURTECO unless evidenced by a purchase order change notice issued and signed by SURTECO.

#### **7. Intellectual Property.**

Seller warrants that the Products and Work, and the normal use thereof, do not infringe or misappropriate any patent, copyright, trademark, service mark, trade secret, or other intellectual property right of any third party. Seller shall defend, indemnify and hold SURTECO, its successors and assigns, harmless from and against any and all actions, claims, liability, costs, damage or expense, including attorneys' fees and other expenses of defense with respect to any claim of patent infringement or the infringement of any proprietary information of third parties arising out of the manufacture, use or sale of the Products or Work called for by this Agreement, provided that this provision shall not apply if any such claim relates to specifications or information furnished to Seller by SURTECO. If the use or sale of any such Products or Work is enjoined as a result of such infringement, Seller at no expense to SURTECO, shall immediately obtain for SURTECO and its affiliates and customers, the right to use and sell such Products or Work or shall substitute an equivalent good or service acceptable to SURTECO, and shall reimburse SURTECO for any costs associated with the substitution.

#### **8. SURTECO's Use.**

SURTECO, its successors and assigns, may subject all Products or Work to further manufacture, may combine them with other articles, or sell or put them to any use whatsoever, and no claim for royalties or additional compensation may be made by Seller or anyone also by reason of such manufacture, combination, sale or use. All unpatented ideas, information, designs, devices, prints, drawings and technical data concerning Seller's products, methods or manufacturing processes which Seller discloses or furnishes to SURTECO in connection with this order shall, except only to the extent as may be otherwise specifically agreed in writing by SURTECO and Seller, be deemed to have been disclosed or furnished as part of the consideration for this order, and Seller agrees not to assert any claims by reason of SURTECO's use, duplication or disclosure thereof.

#### **9. Nondisclosure of Information.**

Seller shall hold in strict confidence and not use for itself or any other person all information, specifications, data, processes, reports, or technical or business information submitted by or on behalf of SURTECO to Seller pursuant to, or in connection with the Agreement or given purchase order (collectively, "SURTECO Information"). SURTECO shall retain title to all such SURTECO Information and Seller shall, at SURTECO's request or upon completion of this Agreement or a given purchase order, return or deliver to SURTECO all such SURTECO Information. Seller shall not sell, or dispose of as scrap or otherwise, any completed or partially completed or defective Products embodying or comprising any SURTECO's Information without SURTECO's written consent. SURTECO shall have the right to audit all of Seller's pertinent books and records in order to verify compliance with the Agreement.

Seller waives all claims regarding SURTECO's use of all information, specifications, processes, reports, technical data or business information disclosed to SURTECO in connection with the Products and Work covered by the Agreement unless, prior to disclosure by Seller to SURTECO, such items are the subject of a written confidentiality agreement signed by SURTECO. Seller hereby assigns to SURTECO all right, title and interest in and to all intellectual property rights (whether or not patentable), and including inventions, trade secrets, trademarks, copyrights and mask work rights in any Products created by Seller for SURTECO under the Agreement. Supplier agrees to carry out all formalities to legally vest exclusive ownership of such intellectual property rights in SURTECO at SURTECO's expense and request.

Seller shall not disclose to third parties any information regarding SURTECO or its business or its customers, including the existence and terms of any purchase order, or use such information itself for any purpose other than performing this order, without SURTECO's written prior approval. Seller shall not use SURTECO's name or any SURTECO trademark in any advertising or publicity without SURTECO's prior written approval.

#### **10. Tooling and SURTECO's Property.**

All tools, equipment or materials furnished to Seller by SURTECO shall be and remain the personal property of SURTECO, and whenever practicable, shall be plainly marked by Seller as the property of SURTECO and shall be safely stored separately and apart from Seller's property, and free of liens and encumbrances at Seller's sole cost and expense. SURTECO's property while in Seller's custody shall be held at Seller's risk, shall be insured by Seller at Seller's expense in amounts equal to replacement costs with loss payable to SURTECO and shall be subject to removal at SURTECO's request. Seller shall not alter or use such tooling or other property for any purpose other than that specified by SURTECO or for any other person without the prior written consent of SURTECO. Seller shall not move or relocate such tooling or other property outside the Seller production site designated by SURTECO without written consent or instruction from SURTECO. Seller shall keep adequate records with a description, location, and condition of such tooling and other property and such records shall be made available to SURTECO upon request. Seller shall store, protect, preserve, repair and maintain such SURTECO tooling and other property in accordance with sound industrial practice all at Seller's expense. In the event that SURTECO's tooling and other property become lost or damaged to any extent while in Seller's possession, Seller agrees to reimburse SURTECO or replace such tooling and other property at Seller's expense.

Seller shall not duplicate the tooling without prior consent from SURTECO, for purposes not intended in a given purchase order. Samples provided by SURTECO to Seller will not be analyzed, deconstructed, re-engineered by or disclosed to any third party, nor incorporated into any product that is commercially used or offered for sale, without explicit prior written permission of SURTECO, and at SURTECO's request, any samples not consumed by Seller to fulfil its obligations under the Agreement shall be destroyed or returned to SURTECO.

SURTECO may move such tooling or other property at any time at its discretion. At the completion or termination of a purchase order, Seller shall return such tooling and other property to the SURTECO or request disposition instructions from SURTECO.

#### **11. Insurance.**

Seller shall maintain and require its agents and subcontractors, if any, to maintain in full force and effect throughout the entire term of the Agreement, insurance coverage in amounts acceptable to SURTECO (and in no event less than a reasonable amount sufficient to satisfy Seller's defense and indemnification obligations hereunder), insuring: (1) Seller's, and/or Seller's agents' and subcontractors' liability to pay for any bodily injuries or death received or sustained by any person or persons, including employees of Seller, in any manner caused by, arising from, incident to, connected with or growing out of the Work governed by this Agreement, (including, without limitation, the use of machinery, equipment or vehicles on SURTECO's premises, and/or the condition of SURTECO's land, buildings, facilities, machinery, equipment or vehicles), and (2) Seller's, and/or Seller's agents' and subcontractors' liability to pay for any and all loss, damage and injury to property in any manner caused by, arising from, incident to, connected with or growing out of the work governed by the Agreement or a given purchase order, (including, without limitation, the use of machinery, equipment, or vehicles on SURTECO's premises, and/or activities upon, or the condition of, SURTECO's land, buildings, facilities, machinery, equipment, or vehicles) (collectively, the "Seller Insurance"). In the event such insurance is provided under a "claims made" form of policy, Seller shall ensure that the retroactive date of such policies predate the Agreement and that such coverage is continually maintained for a period of not less than five (5) years after the termination or expiration of the term of this Agreement, or any extensions hereto.

The Seller Insurance shall designate SURTECO and SURTECO affiliates as an additional insured and the insurance carrier shall promise to defend SURTECO, SURTECO affiliates and/or SURTECO's agents and employees. The Seller Insurance shall contain a contractual liability clause providing coverage for liabilities arising under the Agreement which coverage shall provide a defense and coverage to SURTECO and/or SURTECO's agents and employees regardless of whether the alleged bodily injury, death, or property damage was caused or alleged to be caused in whole or in part by the conduct, fault or negligence of SURTECO and/or SURTECO's agents and employees.

Prior to the commencement of any work or services, Seller and all its agents and subcontractors, if any, shall furnish certificates of insurance satisfactory to SURTECO (or if SURTECO so directs, copies of the actual insurance policies) from each insurance carrier showing that the required insurance is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be cancelled or changed until the expiration of at least thirty (30) days after written notice of such cancellation or change has been mailed to and received by SURTECO. All copies of policies and certificates of insurance submitted to SURTECO shall be in form and content acceptable to SURTECO.

In addition to its other remedies, SURTECO may, at its sole option and without liability to Seller, suspend the work and/or exclude Seller from SURTECO's premises until Seller furnishes satisfactory evidence of its full compliance with the provisions of the Agreement. Seller's obligations in this Section shall be enforceable regardless of whether the indemnity provisions of this Agreement or a given purchase order are enforceable. All Seller Insurance shall be endorsed whereby the insurer waives any and all rights of subrogation against SURTECO, SURTECO affiliates, agents, and employees. The obligation of Seller to provide the insurance hereinabove specified shall not limit in any way the liability or obligations assumed by Seller elsewhere in the Agreement.

#### **12. Services on SURTECO's Premises.**

The safety and health of all persons employed by Seller and its agents or subcontractors on SURTECO's premises, and/or any other person who enters upon SURTECO's premises for reasons relating to work performed under the Agreement shall be the sole responsibility of Seller. Seller shall at all times maintain good order among its employees, agents, and subcontractors and shall not engage for the performance of the Agreement any unfit person or anyone not skilled in the work assigned to him. Seller shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees, agents, or subcontractors. Such measures and precautions shall include, but shall not be limited to, following all SURTECO safety procedures and requirements, providing all safeguards and warnings necessary to protect workers and others against any conditions on SURTECO's premises which could be dangerous and to otherwise prevent injuries of any kind whenever work is being performed. If Seller, its employees, agents or subcontractors are to furnish any labor or services of any kind whatsoever on SURTECO's premises in connection with this Agreement: (a) Seller agrees to abide by SURTECO's rules and regulations governing contractors and suppliers while working on or maintaining facilities on SURTECO's premises, copies of which will be furnished on request; (b) Seller shall, before starting work, furnish SURTECO with certificates from insurance carriers of Seller and Seller's subcontractors (if any) that policies of insurance have been issued covering their legal liability under (i) applicable workmen's compensation and occupational disease laws; (ii) public liability insurance with limits of \$100,000/\$300,000 for bodily injury or death and \$100,000/\$300,000 for property damage, including loss of use thereof; (iii) contractual liability insurance covering the indemnification set forth in paragraph 12 hereof, and (iv) motor vehicle liability insurance with limits of \$100,000/\$300,000 for bodily injury or death and \$50,000 for property damage, including loss of use thereof; (c) Seller's experts or employees shall not thereby be deemed to be the agents or employees of SURTECO. Seller will undertake to keep the materials and premises involved free from any lien whatever for materials and labor incident to the performance of Seller's obligations hereunder. If Seller furnishes material and services for construction and improvement of realty and the installation of personality for a lump sum amount, Seller agrees to furnish an analysis thereof as SURTECO may reasonably require for accounting purposes. Seller shall be solely responsible for material furnished by SURTECO on other than a charge basis in connection with this order.

Seller shall confine all equipment and Seller's employees, agents, or subcontractors to that portion of SURTECO's premises where the work is to be performed or to roads leading to and from such work sites, and to any other area which SURTECO may permit Seller to use. Seller shall perform any work to be performed on SURTECO's premises in such manner as not to interfere or disrupt the use of SURTECO's premises by SURTECO, its employees, invitees, lessees, agents and contractors. Upon completion of the work Seller shall leave the premises clean and free of all tools, equipment, and waste material. Seller shall immediately notify SURTECO if any person is injured or claims injury in connection with the work on

SURTECO's premises.

### **13. Indemnification.**

Seller shall indemnify, defend, and hold harmless SURTECO, its subsidiaries and affiliates, and their respective agents, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Seller's obligations under this Section 12) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of the Products or the Work, the presence of Seller at SURTECO's premises, or the actions or omissions of Seller under this Agreement, including, without limitation, Losses relating to: (a) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by SURTECO or by Seller; (b) damage to or loss of use of property of SURTECO, Seller, or any third party; (c) any contractual liability owed by SURTECO to any third party; (d) any breach of or inaccuracy in the covenants, representations, and warranties made by Seller under this Agreement; (e) the use or sale of the Products or Work called for by this Agreement by SURTECO or its customers; and/or (f) any violation by Seller of any ordinance, regulation, rule or law of the United States or any political subdivision or duly constituted public authority; provided, however, that Seller's indemnity obligations under this paragraph shall not apply to any Losses to the extent initiated or proximately caused by or resulting from the sole or concurrent gross negligence or willful misconduct of any of the Indemnified Parties. Seller, for itself, its successors and assigns, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Seller could preclude its joinder by SURTECO as an additional defendant, or avoid liability for damages, contribution, or indemnity in any legal action brought against any Indemnified Party. Seller's obligation to SURTECO herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Seller under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against SURTECO by an employee of Seller or anyone employed directly or indirectly by Seller or anyone for whose acts Seller may be liable.

### **14. Withholding.**

If SURTECO has a claim under this Agreement, or under any other agreement between SURTECO and Seller, regardless of when it is discovered, including a claim that: (a) Seller's invoice is erroneous; (b) the Products or Work are deficient, defective, or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of a claim; or (d) SURTECO, another contractor, or other party suffers damage or injury which is attributable to Seller; then SURTECO may, without notice, withhold payment of, or set off the amount of its claim, costs or loss against, any amount invoiced to it.

### **15. Cancellation; Termination.**

SURTECO may cancel an order in whole or in part: (a) on account of defects in the Products or Work furnished hereunder; (b) if the Products or Work are not delivered within the time stated in the order; (c) if Seller makes an assignment for the benefit of creditors or a receiver is appointed for Seller; (d) if proceedings in bankruptcy or for corporate reorganization are filed by or against Seller; or (e) upon Seller's failure to comply with any of the terms and conditions of the Agreement.

SURTECO may, at any time, terminate the Agreement in whole or in part by written or verbal notice to Seller. If the Agreement is terminated by SURTECO for convenience, any claim of Seller shall be settled on the basis of reasonable costs (excluding anticipated profits) it has incurred in the performance of the Agreement or a given purchase order. Upon receipt of such notice of termination, Seller shall, unless otherwise directed by SURTECO, (a) immediately terminate all Work under the applicable purchase order; (b) terminate all Seller issued purchase orders relating to the performance of the Agreement or the purchase order terminated by SURTECO's notice; (c) to the extent requested by SURTECO, transfer title and deliver to SURTECO (i) all completed Products and Work which conform to the requirements of SURTECO's Agreement or the given purchase order and (ii) all reasonable quantities of work in process and materials produced or acquired in respect of the performance of the Work terminated which are of a type and quality suitable for producing supplies in conformance to the requirements; (d) take all action necessary to protect property in Seller's possession in which SURTECO has or may acquire an interest; and (e) submit to SURTECO promptly, but not later than twenty (20) days from the effective date of such termination its termination claim.

SURTECO will make no payments for finished Products, Work, works-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized by the Agreement or in a given purchase order nor for any undelivered Products which are in Seller's standard stock or which are readily marketable. Seller shall not manufacture in advance of Seller's normal material lead-time and production flow time. Any preparation in violation of this prohibition shall be done at Seller's risk, and if SURTECO terminates the Agreement or a given purchase order, the advanced commitment in materials and work done by Seller shall not be claimed in this respect against SURTECO.

Notwithstanding the foregoing, if termination is occasioned by Seller's violation of any term or condition of the Agreement or a given purchase order, including violation of any warranty or delay in delivery, Seller shall not be entitled to any costs, and SURTECO may claim against Seller all remedies provided by law and equity.

### **16. Liens; Work on Premises.**

Seller hereby irrevocably waives any rights he may now have or which he may acquire with respect to any Products or Work governed by the Agreement or a given purchase order to file liens or charges against SURTECO or SURTECO's property. Seller shall pay, satisfy and discharge all mechanics', material men's and other liens, and all claims, obligations and liabilities which may be asserted against SURTECO or its property by reason of, or as a result of, any acts or omissions of Seller, its subcontractors, agents, employees, representatives, licensees or suppliers.

**17. Changes in Manufacturing Location, Materials or Process.**

Seller shall not make any changes in (i) the manufacturing location of the Products or the manufacturing location of a sub-supplier of any material component of the Products, (ii) any design, materials or processes used for the Products, or (iii) any scope of work or method of performing of services, without reasonable advance written notice to SURTECO and SURTECO's written consent. Upon request, Seller will furnish to SURTECO in advance of making any such changes such information as SURTECO may request to evaluate any proposed changes including the following: (a) a description of any changes in manufacturing location of Seller or any sub-supplier, processes or methods; (b) a list of all ingredients in the Products and a description of any changed ingredients; (c) the amount of one or more ingredients and a description of any change in amounts; (d) information concerning any changes in or addition to Seller's processes; and/or (e) Material Safety Data Sheets for all ingredients and (f) a description of any increase of scope of work.

**18. Licenses and Permits.**

Seller shall secure and pay for all licenses and permits which Seller may require to comply fully with all applicable laws, ordinances and regulations in connection with the performance of the Agreements including any permits, licenses or other governmental authorization(s) necessary for the exportation or importation of the Products into the designated country of importation. Seller shall be responsible for all damages and shall indemnify and save SURTECO harmless from and against all damages and liability, which may arise out of the failure of Seller to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances and regulations.

The Agreement includes rights to all related customs duty and import drawback rights, if any (including rights developed by substitution and rights which may be acquired from Seller's suppliers) which Seller can transfer to SURTECO. Seller agrees to inform SURTECO of the existence of any such rights and upon request can supply such documents as may be required to obtain such drawback.

For all products covered by the Agreement, Seller shall provide to SURTECO an up-to-date certificate of origin pursuant to the provisions of the North American Free Trade Agreement. Seller shall provide to SURTECO such content information as SURTECO reasonably requests for the purpose of assisting SURTECO's customers in complying with all applicable content reporting requirements or for assisting SURTECO's custom declaration for importation or transshipment.

**19. Force Majeure.**

Neither party shall be liable for defaults due to acts of God or the public enemy, acts or demands of any government or any government agency, strikes, fires, floods, accidents, pandemics, epidemics, or other unforeseeable causes beyond its control and not due to its fault or negligence; provided, however, Force Majeure shall not include any labor problems or strikes relating to the workforce of Seller or its suppliers or subcontractors or any commercial circumstances affecting pricing or availability of any goods or raw materials furnished by Seller or its suppliers or subcontractors. Each party shall notify the other in writing of the cause of such delay within 5 days after the beginning thereof. During the period of such delay or failure to perform by Seller, SURTECO, at its option, may purchase Products or Work from other sources and reduce its schedules to Seller by such quantities, without liability to Seller or have Seller provide the Products or Work from other sources in quantities and at times requested by SURTECO and at the price set forth in the Agreement or given purchase order, if requested by the SURTECO. Seller shall promptly after SURTECO's request for adequate assurances provide Seller's assurances regarding the likely length of the delay and shall in all cases use its best efforts to eliminate the causes of the delay. If the delay is likely to exceed 30 days, SURTECO may terminate the Agreement or given purchase order without liability to Seller.

**20. Service Parts.**

The Seller warrants that items of the type purchased under the Agreement or a given purchase order, including the subassemblies and spare parts, shall be made available by Seller to SURTECO and its customers during the operational life of the items purchased or for ten (10) years after the date of final shipment under this order, whichever is later. Further, during said period, Seller shall continue to provide technical support and service. In the event Seller discontinues manufacture of the aforementioned items, sub-assemblies or spare parts thereof or does not provide any of them in a timely manner for SURTECO's requirements, Seller shall make available to SURTECO all drawings, specifications, data and know-how which will enable and facilitate SURTECO, its suppliers, or its customers to manufacture or procure and use and sell said items, sub-assemblies and spare parts under a royalty-free license which is hereby granted.

**21. Legal Compliance.**

Seller represents and warrants that in performance of all work under the Agreement, Seller and its agents and subcontractors have complied with or will comply with all applicable federal, state, local, and foreign laws and ordinances including, but not limited to, all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority, the Occupational Safety and Health Act of 1970 (29 U.S.C. Sections 651, 678), the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201-219), the Work Hours and Safety Act of 1962 (40 U.S.C. Sections 327, 333), the Equal Employment Opportunity Act (42 U.S.C. Sections 2000e, et seq.), Equal Opportunity Clauses of Executive Order 11246, (60-1.4), Section 503 of the Rehabilitation Act of 1973, (60-741.5), and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (60-250.4), as well as any other regulations pertaining to these orders and federal regulations governing affirmative action programs and all laws restricting the use of convict labor.

Seller represents and warrants that in performance of work under the Agreement, Seller and its agents and subcontractors have complied with all laws, regulations, statutes and ordinances of all governmental entities including local, state, federal and foreign, now or hereafter enacted, which regulate any material because it is radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601, 9615, 9631-9633, 9641, 9651, 9657), the Resource Conservation Recovery Act of 1976, the Federal Water Pollution Control Act (33 U.S.C. Sections 1251, et seq.), the Clean Air Act (42 U.S.C. Sections 7401, et seq.), the Montreal Protocol on Substances that Deplete the Ozone Layer (42 U.S.C. Sections 7671, 7642), the

Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.) and similar laws, rules, statutes, treaties or orders and international understandings. Upon request, Seller agrees to issue certificates certifying compliance with any laws or regulations as may be applicable to the material, products, or services furnished hereunder.

If requested by SURTECO, Seller shall promptly furnish to SURTECO in such form and detail as SURTECO may direct: (a) a list of all component materials in the Products; (b) the amount of one or more component materials; and (c) information concerning any changes in or additions to such component materials. Prior to and with the shipment of the Products, Seller agrees to furnish to SURTECO, in all cases, sufficient warning and notice in writing (including appropriate labels on Products, containers and packing) of any hazardous material which is an ingredient or a part of any of the Products, together with such special handling instructions as may be necessary to advise carriers, SURTECO, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Products, containers and packing shipped to SURTECO.

Seller shall furnish to SURTECO any information required to enable SURTECO to comply with such applicable laws, rules, and regulations in its use of the Products and Work. If Products and Work are incorporated by SURTECO into other products and services sold under a federal contract or subcontract, those applicable procurement regulations that are required by federal statute or regulation to be inserted into contracts or subcontracts shall be deemed to apply to the Agreement or given purchase order. Seller warrants that (i) each chemical substance contained in Products is on the inventory of chemical substances compiled and published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act, and (ii) all Material Safety Data Sheets required to be provided by Seller for Products shall be provided to SURTECO prior to shipment of the Products and shall be complete and accurate. Seller hereby warrants, certifies and represents and agrees that neither the Products nor any component of the Products, (as defined in a given purchase order): a) contains any "class I substance", as that term is defined in 42 USC Section 7671 (3) as now in existence or hereafter amended, or b) has been "manufactured with a process that uses" any "class I substance" within the meaning of 42 USC Section 7671j (d)(2) as now in existence or hereafter amended.

## **22. Notices.**

All notices, demands and other communications which may or are required to be given to or made by either party to the other in connection with the Agreement shall be in writing (including fax, or other similar writing) and shall be deemed to have been duly given or made (i) if sent by certified mail, return receipt requested, five days after the posting thereof with first class postage attached, (ii) if sent by hand or overnight delivery, upon the delivery thereof, and (iii) if sent by fax, upon confirmation of receipt of such fax, in each case addressed to the business unit president and principal place of business of each party or to such other address as either party hereto may specify from time to time by notice to the other party.

## **23. Assignment.**

Except as otherwise expressly provided herein, neither this Agreement nor any interest hereunder shall be assignable by Seller without the prior written consent of SURTECO, which may be withheld at SURTECO's sole discretion.

## **24. Waiver.**

No waiver of a breach of any provision of this Agreement shall be effective to discharge in whole or in part any claim or right arising out of such breach unless such waiver is in writing and signed by SURTECO.

## **25. Governing Law.**

This Agreement is to be construed in accordance with the laws of the State of Delaware, without regard to conflict of laws rules thereof. The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Products, if the same would otherwise apply here.

## **26. Jurisdiction.**

SURTECO and Seller agree that any legal suit, action, or proceeding hereunder shall be brought and resolved exclusively by the State and Federal courts located in Summit County, Ohio, and the courts to which an appeal therefrom may be taken; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. Legal process in any proceeding may be served on any party anywhere in the world.

## **27. Relationship of the Parties.**

In satisfying its obligations hereunder, Seller shall operate as and have the status of an independent contractor, and shall not act as or be an agent or employee of SURTECO. As an independent contractor, Seller shall be solely responsible for the end result of its work and as such shall maintain daily control over its workers and the means and methods used to accomplish the end result. Seller shall be solely responsible for the employment of workers and shall defend, indemnify and hold SURTECO harmless from any claim, demand, loss, cost, expense, or suit alleging the violation or claimed violation of any local, state or federal law, rule or regulation relating to the safety and employment of workers, or requiring the employer to withhold taxes or similar charges from employees' pay. Nothing in this Agreement or in the performance of the Seller's obligations required hereunder shall be construed to create a partnership, joint venture or joint business arrangement between SURTECO and Seller.

## **28. Limitation of Liability.**

IN NO EVENT SHALL SURTECO HAVE ANY LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY PUNITIVE, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL LOSS OR DAMAGE ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING LOSS OF DATA, PROFITS, INTEREST OR REVENUE OR INTERRUPTION OF BUSINESS, EVEN IF SURTECO HAS BEEN

(a) Except as expressly provided herein, this Agreement constitutes the complete agreement of the SURTECO and Seller with respect to the purchase and sale of Seller products and services and supersedes all prior written or oral agreements or understandings, prior performance, courses of dealing and industry practices. The Agreement may not be changed, amended, terminated, augmented, rescinded or discharged (other than by performance), in whole or in part, except by a writing executed by SURTECO and Seller which expressly references the Agreement or a given purchase order.

INFORMED OF OR MIGHT OTHERWISE HAVE ANTICIPATED OR FORESEEN THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

**29. Severability.**

In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

**30. Improper Payment.**

Seller represents and warrants to SURTECO that Seller has not offered or given and will not offer or give any employee, agent, or representative of SURTECO or any government any gratuity or improper payment with the intent of securing any business from SURTECO or favorable treatment under any agreement with SURTECO as prescribed in FAR 52.203-3. Any breach of this warranty shall be a material breach of the terms and conditions of this Agreement and each and every purchase order between SURTECO and Seller.

**31. Entire Agreement.**

Revised 2/23

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