

General Conditions of Purchase

Ensure Micropower Inc., a company duly organized and registered under the laws of the state of California in the United States of America and maintaining principal place of business at 2581 Junction Avenue, San Jose, California 95134 (Ensure). Ensure further holds subsidiaries that act as own enterprises, all entities (see article definition "affiliates") apply the herewith defined Terms and Conditions of Purchase.

1. Definitions

In this document: (a) "Affiliate(s)" shall mean any and all other companies, firms and legal entities with respect to which now or hereafter a party hereunder respectively, directly or indirectly hold 50% or more of the nominal value of the issued share capital; (b) "Agreement" shall mean the binding contract formed as described in Section 2.1 herein; (c) "Goods" shall mean both tangible and intangible goods, including software and related documentation and packaging. References to Goods shall, where appropriate, be deemed to include Services; (d) "Services" shall mean the services to be performed by Supplier for Ensure under the Agreement; (f) "Supplier" shall mean each person or entity that enters into the Agreement.

2. Acceptance

2.1. These General Conditions of Purchase, if not replaced by a separate agreed Purchase Contract between Ensure and Supplier, together with the relevant Purchase Order issued by Ensure, set forth the terms under which Ensure offers to purchase Goods and/or Services from Supplier. When Supplier accepts Ensure's offer, either by acknowledgement, delivery of any Goods and/or commencement of performance of any Services, a binding contract shall be formed. Such Agreement is limited to these General Conditions of Purchase as specified in this document, the relevant Purchase Order and any attachments. Ensure does not agree to any proposed amendment, alteration, or addition by Supplier. The Agreement can be varied only in writing signed by Ensure. Any other statement or writing of Supplier shall not alter, add to, or otherwise affect the Agreement.

2.2. All costs incurred by Supplier in preparing and submitting any quotation and acceptance of Ensure's offer shall be borne by Supplier.

2.3. Ensure may terminate this Agreement in whole or in part at any time for any reason on written notice to Supplier. No cancellation charges are due for the cancellation of Purchase Orders for standard items. Any claim for cancellation charges for nonstandard items must be submitted to Ensure in writing (including supporting documents) within two (2) weeks of receipt of Ensure's termination notice and may not exceed the Supplier's material and production costs less saved expenses. Ensure may request reasonable changes from the Supplier with regard to the Goods to be delivered affecting composition, quantity, construction and design. Mutually satisfactory agreements shall be concluded concerning the consequences of such modifications, in particular with regard to changes in the cost structure as well as with regard to delivery dates.

3. Time is of the Essence

Time is of the essence and all dates referred to in the Agreement shall be firm. In the event that Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under the Agreement, Supplier shall promptly notify Ensure in writing.

4. Delivery of Goods

4.1. Deliveries shall be processed in accordance with Ensure's instructions. Unless expressly agreed otherwise in writing, all shipments will be made DDP "Delivered Duty Paid" to the delivery address specified in the Agreement. The Incoterms 2010 (as published by the International Chamber of Commerce) apply to all commercial terms.

4.2. Delivery shall be made as per the applicable Incoterm, but this shall not constitute acceptance of the Goods.

4.3. Supplier shall, concurrently with the delivery of the Goods, provide Ensure with copies of all applicable licenses. Each delivery of Goods to Ensure shall include a packing list which contains at least (i) the applicable order number, (ii) the Ensure part number (if applicable and stated in the corresponding Purchase Order), (iii) the quantity shipped, (iv) the net and gross weight of the Goods and (iv) the date of shipment. Supplier shall submit to Ensure copies of the corresponding certificates and/or compliance reports for any required certifications and approvals, including any applicable CE (Communauté Européenne), RoHS (2011/65/EU), REACH (EC 1907/2006), or Global Harmonized System of Classification and Labelling of Chemicals (GHS) regulation, and shall appropriately affix on each product (or as permitted by the applicable certifying entity, on the containers for the product) the safety and/or emissions marks of the applicable testing bodies in accordance with each such body's requirements. If any Goods show dangerous properties according to the REGULATION (EC) No 1272/2008, Supplier must affix the corresponding danger labels. Prior to the first delivery

of Goods, Supplier shall provide Ensure a Material Safety Data Sheet ("MSDS") according to the REGULATION (EC) No 1907/2006 in English language. Supplier shall declare radioactive substances to Ensure in advance. Supplier shall comply with any applicable legal requirements related to dangerous substances. Supplier shall update any licenses and certificates from time to time to ensure continued compliance with all applicable laws.

4.4. Supplier shall make no partial delivery or delivery before the agreed delivery date(s). Ensure reserves the right to refuse delivery of Goods and return same at Supplier's risk and expense if Supplier materially defaults in the manner and time of delivery or in the rate of shipment. Ensure shall not be liable for any costs incurred by Supplier related to production, installation, assembly or any other work related to the Goods, prior to delivery in accordance with the Agreement.

4.5. Any design, manufacturing, installation or other work to be performed by or on behalf of Supplier under the Agreement shall be executed with good workmanship and using proper materials.

4.6. Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and Ensure's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for Ensure. Notwithstanding the provisions of the applicable Incoterms, Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle (before delivery as per the applicable Incoterm) or pack the Goods; Ensure shall not be required to assert any claims for such loss or damage against the common carrier involved.

5. Changes to Goods

Supplier shall not, without prior written consent of Ensure, make any material changes affecting Goods, including, but not limited to, process or design changes or changes to manufacturing processes that could have a material impact upon the form, fit, function, processing performance of the Goods. Supplier shall issue a PCN (Process Change Notification) timely in advance to receive acceptance from Ensure.

6. Performance of Services

6.1. Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.

6.2. Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Services.

6.3. Only written confirmation by Ensure shall constitute acceptance of the Services performed.

7. Inspection, Testing, Rejection of Goods

7.1. Inspection, testing or payment for the Goods by Ensure shall not constitute acceptance. Inspection or acceptance of or payment for the Goods by Ensure shall not release Supplier from any of its obligations, representations or warranties under the Agreement.

7.2. Ensure may, with 5 (five) days pre-notice, inspect the Goods or the manufacturing process for the Goods. If any inspection or test by Ensure is made on the premises of Supplier, Supplier shall provide reasonable facilities and assistance for the safety and convenience of Ensure's inspection personnel.

7.3. Ensure shall inspect the Goods delivered for apparent undamaged condition and completeness within reasonable time. Notification of evident defects shall – as a rule – be effected within two (2) weeks from receipt of the Goods. Notification of hidden defects shall be effected promptly after their discovery. If Ensure does reject any of the Goods or Services Section 10 below shall apply. Within two (2) weeks from such notification, Supplier shall collect the Goods from Ensure at its own expense or shall promptly perform the Services in accordance with Ensure's instructions. If Supplier does not collect the Goods within said two (2) weeks period, Ensure may have the Goods delivered to Supplier at Supplier's cost and risk, or with the Supplier's prior consent may destroy the Goods, without prejudice to any other right or remedy Ensure may have under the Agreement or at law.

7.4. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to conform to the Agreement, Ensure may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and

return any or all nonconforming units (or accept them at a reduced price) and charge Supplier the cost of such inspection.

8. Prices; Payment

8.1. Unless provided otherwise in the Purchase Order, title in the Goods shall pass to Ensure at the time risk is transferred to Ensure pursuant to the applicable Incoterm.

8.2. All prices quoted in the Agreement shall be fixed prices. Supplier warrants that such prices are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar quantities of Goods or Services of like kind and quality.

8.3. All prices are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax only. If the transactions as described in the Agreement are subject to any applicable VAT, sales tax, GST, consumption tax or any other similar tax, Supplier may charge VAT, sales tax, GST, consumption tax or any other similar tax to Ensure, which shall be paid by Ensure in addition to the prices quoted. Supplier is responsible for paying any applicable VAT, sales tax, GST, consumption tax or any other similar tax to the appropriate (tax) authorities. At or after the time delivery has been completed as per Section 4.2 but ultimately within six months from delivery, Supplier shall issue an invoice meeting all applicable legal and fiscal requirements and which shall contain: (i) the Ensure Purchase Order number, and (ii) wording that shall allow Ensure to take advantage of any applicable "input" tax deduction. In addition, Supplier shall inform Ensure whether Ensure is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.

8.4. Any license fees shall be included in the price.

8.5. Subject to the acceptance of the Goods and/or Services by Ensure, and unless provided otherwise in the Purchase Order, payment shall be made within thirty (30) days from the end of the month of the receipt of the correct invoice in accordance with Section 8.3 in the proper form.

8.6. If Supplier fails to fulfill any of its obligations under the Agreement, Ensure may suspend payment to Supplier upon notice to Supplier.

8.7. Supplier acknowledges and agrees that any amount to be paid by Ensure to Supplier may be paid on Ensure's behalf by another Affiliate of Ensure and/or a third party designated by Ensure. Supplier shall treat such payment as if it were made by Ensure itself and Ensure's obligation to pay to Supplier shall automatically be satisfied and discharged in the amount paid by such entity or third party.

9. Warranty

9.1. Supplier represents and warrants to Ensure that: (a) all Goods are suitable for the accepted usage and shall be new, merchantable, of good quality and free from all defects in design, material, construction and workmanship; (b) all Goods strictly comply with the specifications, approved samples and all other requirements under the Agreement; (c) all required licenses in relation to the Goods are and shall remain valid and in place, that the scope of such licenses shall properly cover the intended use of the Goods and all such licenses shall include the right to transfer and the right to grant sublicenses; (d) all Goods shall be free from any and all liens and encumbrances; all Goods have been designed, manufactured and delivered, and all Services have been provided in compliance with all applicable laws and regulations, including, but not limited to, environmental, industrial health and safety regulations and accident prevention regulations and labor laws. Supplier shall furnish to Ensure any information required to enable Ensure to comply with such laws, rules, and regulations in its use of the Goods and Services; (e) the Goods will be accompanied by written and detailed specifications of the composition and characteristics of the Goods, to enable Ensure to transport, store, process, use and dispose of such Goods safely and in compliance with law; (f) all Goods do not violate or infringe any third party domestic or foreign patent, copyright (including portrait rights and moral rights), trade secret, trademark or other intellectual property rights.

9.2. These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Supplier's standard warranties or other rights or warranties which Ensure may be entitled to, but shall be in addition. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the Goods, and shall extend to Ensure and its customers.

Acceptance of, or payment for, all or any part of the Goods or Services furnished under the Agreement shall not be deemed to be a waiver of Ensure's rights, claims and remedies in case of breach of warranty.

9.3. The warranties set forth in Section 9.1 and 9.2 will subsist for a period of twelve (12) months from the date of delivery as per Section 4.2, or such

other period as agreed in the Agreement (the "Warranty Term") or defined by law.

10. Non-conformity of Goods or Services

10.1. If any Goods or Services are defective or otherwise do not conform to the warranties and any other requirements of the Agreement, Ensure may, without prejudice to any other right or remedy available to it under the Agreement or at law (including but not limited to claims for further damages regardless): a) demand Supplier to - at Ensure's discretion - either promptly repair or replace the nonconforming Goods free of charge; and b) reduce the agreed price or rescind the Agreement in whole or in part or claim damages instead of performance if repair or replacement is still not or not successfully effected after expiry of a reasonable period of grace set by Ensure; however, rescinding the Agreement does not entitle Ensure to claim damages instead of performance in addition; or c) in cases where the Supplier, due to special urgency, cannot be informed and requested by Ensure to repair or replace within a period of grace, Ensure may itself repair or replace the nonconforming Goods at the Supplier's cost.

10.2. Supplier shall bear all cost of repair, replacement and transportation of the nonconforming Goods and Services and its replacements, and shall reimburse Ensure in respect of all costs and expenses (including, without limitation, inspection, disassembling, installation, handling and storage costs) incurred by Ensure in connection therewith.

10.3. Risk in relation to the nonconforming Goods shall pass to Supplier upon the date of notification thereof.

11. Ownership and Intellectual Property

11.1. All machinery, tools, drawings, specifications, raw materials and any other property or materials furnished to Supplier by or for Ensure for use in the performance of the Agreement, shall be and remain the sole exclusive property of Ensure. All machinery, tools, drawings, specifications, raw materials, deliverables and any other property or materials paid for by Ensure shall at the time of manufacture become the sole exclusive property of Ensure. If Ensure's property is processed to form a new item, any processing shall take place on behalf of Ensure, and if Supplier acquires co-ownership by combining or mixing the goods, it hereby assigns that portion to Ensure. The transfer of possession shall be replaced by Supplier safekeeping the items for Ensure free of charge. Ensure's property shall not be furnished to any third party without Ensure's prior written consent, and all information with respect thereto shall be confidential and proprietary information of Ensure. In addition, any and all of the foregoing shall be used solely for the purpose of fulfilling orders from Ensure, shall be marked as owned by Ensure, shall be held at Supplier's risk, shall be kept in good condition and, if necessary, shall be replaced by Supplier at Supplier's expense, shall be subject to periodic inventory check by Supplier as reasonably requested from time to time by Ensure, and shall be returned promptly upon Ensure's first request. Items in replacement for Ensure's property shall become the sole exclusive property of Ensure. Transfer of possession shall be replaced by Supplier safekeeping the items for Ensure free of charge. If the Supplier places an order with a sub-supplier for the manufacture of tools, machinery or models for the execution of this Agreement, and Ensure pays for the tools, machinery or models, then the Supplier shall assign to Ensure his claim against the sub-supplier for transfer of ownership in such tools, machinery or models. Except as otherwise expressly agreed in writing, Supplier agrees to furnish at its own expense all machinery, tools, and raw materials necessary to perform its obligations under the Agreement.

11.2. Supplier represents and warrants to Ensure (i) that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party (including Supplier's employees and subcontractors), and (ii) that it holds all rights, title and interest necessary to license to Ensure any intellectual property right (including patents, trademarks, copyrights, trade names, trade secret, licenses or other proprietary right) of every component of the Goods and/or Services provided to Ensure, as a whole or as integrated part of another Good/ Service, including but not limited to machinery, tools, drawings, designs, software, demos, molds, specifications or pieces.

11.3. Ensure shall retain all rights in any samples, data, works, materials and intellectual and other property provided by or for Ensure to Supplier. Supplier shall grant to Ensure a fully paid-up, non-exclusive, worldwide, sub-licensable right to use in modified or unmodified form in all ways any intellectual property and copyrights embodied in the Goods or Services or otherwise produced or acquired by Supplier for Ensure under this Agreement.

11.4. Supplier shall not have any right, title or interest in or to any of Ensurge's samples, data, works, materials, trademarks and intellectual and other property nor shall the supply of Goods and/or Services alone or in any combination, or the supply of packaging containing Ensurge's trademarks or trade names give Supplier any right or title to these or similar trademarks or trade names. Supplier shall not use any trademark, trade name or other indication in relation to the Goods or Services alone or in any combination without Ensurge's prior written approval and any use of any trademark, trade name or other indication as authorized by Ensurge shall be strictly in accordance with the instructions of and for the purposes specified by Ensurge.

11.5. Supplier shall not, without Ensurge's prior written consent, publicly make any reference to Ensurge, whether in press releases, advertisements, sales literature or otherwise.

11.6. Supplier shall provide without additional charge to Ensurge any documentation required to install, use and maintain the Goods/ Services (including any software incorporated therein), containing a level of detail and quality of information such that a person reasonably qualified for the position for which the document was written (e.g. user, developer, maintenance technician, operator, process engineer, and others) will be able to perform his or her assigned tasks by solely reading and/or referring to the documentation. Supplier shall grant to Ensurge without additional charge the right to reproduce all or part of the documentation for internal use by Ensurge and its consultants, contractors, and business partners.

12. Intellectual Property Indemnification

12.1. Supplier shall indemnify and hold harmless Ensurge, its Affiliates, agents and employees and any person selling or using any of Ensurge's products in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party or any intellectual property right, or, if so directed by Ensurge, shall defend any such claim at Supplier's own expense.

12.2. Ensurge shall give Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. Supplier shall provide all assistance in connection with any such claim as Ensurge may reasonably require.

12.3. If any Goods or Services alone or in any combination, supplied under the Agreement are held to constitute an infringement or if their use is enjoined, Supplier shall, as directed by Ensurge, but at its own expense: either (a) procure for Ensurge or customers the right to continue using the Goods or Services alone or in any combination; or (b) replace or modify the Goods or Services alone or in any combination with a functional, non-infringing equivalent.

12.4. If Supplier is unable either to procure for Ensurge the right to continue to use the Goods or Services alone or in any combination or to replace or modify the Goods or Services alone or in any combination in accordance with the above, Ensurge may terminate the Agreement and upon such termination, Supplier shall reimburse to Ensurge the price paid, without prejudice to Supplier's obligation to indemnify Ensurge as set forth herein.

13. Indemnification

Supplier shall indemnify and hold harmless Ensurge, its Affiliates, agents and employees and anyone selling or using any of Ensurge's products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Goods or Services furnished by Supplier to Ensurge under the Agreement.

14. Compliance with Laws, Retention of Records

14.1. Supplier shall at all times comply with all laws, rules, regulations, and ordinances applicable to the Agreement, including, but not limited to, all fair labour, equal opportunity and environmental compliance laws, rules, regulations, and ordinances. Supplier shall furnish to Ensurge any

information required to enable Ensurge to comply with any applicable laws, rules, and regulations in its use of the Goods and Services.

14.2. SUPPLIER is reminded to comply with the Ethical Standards and Guidelines defined by the Electronic Industry Code of Conduct.

http://www.eiccoalition.org/media/docs/EICCCodeofConduct4_English.pdf

14.3. Supplier shall store all records and documents relating to the manufacture and supply of Goods to Ensurge in a safe, secure, and accessible manner. The retention period shall be at least seven (7) years from the creation of the record or the document. Document destruction after the retention period will be suspended immediately, upon receipt of a written notice by Ensurge that an official investigation has been instituted or when a lawsuit is filed or appears imminent.

15. Export Controls Compliance

15.1. Supplier agrees and warrants that it will comply with all applicable international and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technology to any country for which the European Union, the United States of America or Japan or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval.

15.2. Supplier agrees to inform Ensurge in writing whether or not the supplied information, goods, software and/or technology is US controlled and/or controlled under the export control laws of its own country, and if so, Supplier will inform Ensurge about the extent of the restrictions (including but not limited to export control legal jurisdiction, export control classification numbers, export control licenses and/or CCATS as applicable).

15.3. Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Ensurge with all information required to enable Ensurge and its customers to comply with such laws and regulations.

15.4. Supplier agrees to indemnify and hold Ensurge harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorney's fees), which Ensurge may incur due to Supplier's non-compliance with applicable laws, rules and regulations. Supplier agrees to notify Ensurge promptly of Supplier's receipt of any such notice of a violation of any export control related law, rule or regulation, which may affect Ensurge.

16. Custom Compliance

16.1. On an annual basis, or upon earlier request of Ensurge, Supplier shall provide Ensurge with a supplier declaration of origin in relation to the Goods sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States. In particular, the declaration should explicitly mention whether the Goods, or part thereof, have been produced in the United States or originate in the United States. Dual-use Goods, or otherwise classified Goods supplied by Supplier should be clearly identified by their classification code.

16.2. For all Goods that qualify for application of Regional or Free Trade Agreements, General Systems of Preference or other preferential arrangements, it is the responsibility of the Supplier to deliver products with the appropriate documentary evidence (e.g. Supplier's declaration, preferential certificate of origin/invoice declaration) to confirm the preferential status of origin.

16.3. Supplier shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin. Supplier shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow Ensurge to be the importer of record. If Ensurge is not the importer of record and Supplier obtains duty drawback rights to the Goods, Supplier shall, upon Ensurge request, provide Ensurge with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Ensurge.

17. Limitation of Liability

ENSURGE SHALL NOT BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDE WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF IMAGE OR LOST DATA, EVEN IF ENSURGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall Ensurge be liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under the Agreement, less any amounts already paid to Supplier by Ensurge. These limitations of liability do not apply in cases of

injury to life, body or health, if liability arises from gross negligence, intent or fraud, or for any liability that cannot by law be excluded or limited.

18. Force Majeure

In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. Ensure shall be entitled to terminate the Agreement with immediate effect by written notice to Supplier, immediately if the context of the non-performance of its obligations justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) days and, upon such notice, Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, shipping or other transportation services, not officially declared epidemic or pandemic, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.

19. Suspension and Termination

19.1. Without prejudice to any other right or remedy available to Ensure under the Agreement or at law, Ensure shall be entitled at its discretion to suspend the performance of its obligations under the Agreement in whole or in part or to terminate or cancel the Agreement in whole or in part by means of written notice to Supplier in the event that: (a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; (b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding (c) Supplier ceases or threatens to cease to carry on business in the ordinary course; (d) Supplier breaches any of its obligations under the Agreement or Ensure, in its reasonable discretion, determines that Supplier cannot or shall not deliver the Goods or perform the Services as required, or (e) Supplier fails to provide adequate assurance of performance following a corrective action request by Ensure due to performance/ quality complaints.

19.2. Ensure shall not be liable to Supplier by virtue of such termination.

20. Confidentiality

20.1. Supplier shall treat all information provided by or on behalf of Ensure or generated by Supplier for Ensure under the Agreement as confidential. All such information shall be used by Supplier only for the purposes of the Agreement. Supplier shall protect Ensure's information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of Ensure and Supplier shall, upon Ensure's demand, promptly return to Ensure all such information and shall not retain any copy thereof.

20.2. The existence and the contents of the Agreement shall be treated as confidential by Supplier.

22. Miscellaneous

22.1. Supplier will maintain comprehensive or commercial general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by Ensure) with, unless otherwise agreed by Ensure or required by law, a minimum limit of two million Euro for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or Services or acts or omissions of Supplier under the Agreement. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to Ensure upon Ensure's request.

22.2. Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of Ensure and nothing contained in the Agreement is intended to create a partnership, joint venture or employment relationship between the parties irrespective of the extent of economic dependency of Supplier on Ensure.

22.3. Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of Ensure. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Supplier from its obligations under the Agreement.

22.4. The rights and remedies reserved to Ensure are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.

22.5. Supplier shall provide Ensure written notice of all product discontinuances twelve (12) months prior to the last order date, including as a minimum Ensure part numbers, substitutions, and last order and shipment dates.

22.6. Neither the failure nor the delay of Ensure to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of Ensure to enforce each and every provision of the Agreement. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of the Agreement. No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by Ensure and Supplier.

22.7. In the event that any provision(s) of these General Conditions of Purchase and of the Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

22.8. All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, including but not limited to Warranty (Clause 9), Intellectual Property (Clauses 11 and 12), Confidentiality (Clause 20), shall survive.

22.9. The Agreement shall be governed by and construed in accordance with the laws of the country or state in which the Ensure ordering entity is located, as applicable.

22.10. Supplier and Ensure each consent to the exclusive jurisdiction of the competent courts in (i) the country or state in which the Ensure ordering entity is located; or (ii), at the option of Ensure, the jurisdiction of the entity of Supplier to which the order was placed, or (iii), at the option of Ensure, for arbitration in which case Clause 22.11 applies. Supplier hereby waives all defenses of lack of personal jurisdiction and forum non-convenience.

22.11. If so chosen by Ensure in accordance with Section 22.10, any dispute, controversy or claim arising out of or in connection with this Agreement, or their breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of Arbitration, which Supplier and Ensure declare to be known to them. Supplier and Ensure agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris, France; (ii) there shall be three (3) arbitrators; (iii) arbitration shall take place in Oslo, Norway, or, at the option of Ensure, at the principal place of business of the Supplier's entity having received the order; (iv) the language to be used in the arbitration proceedings shall be English; and (v) the material laws to be applied by the arbitrators shall be the laws as determined under Clause 22.9.

Ensure General Conditions of Purchase
May 2022