

**GENERAL TERMS AND CONDITIONS
COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS**

Seller and SOLON America Corporation. ("SAC") agree that the purchase and sale of the goods and/or services set forth in the attached purchase order shall be made in accordance with the following General Terms and Conditions unless otherwise agreed in writing by Seller and SAC. Seller and SAC may be referred to collectively herein as the "Parties" or individually as a "Party."

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1. DEFINITIONS. The following terms shall have the meanings set forth below:

(a) "Contract" means these General Terms and Conditions, together with the purchase order attached hereto ("PO") and all documents, exhibits and attachments thereto. If these terms and conditions are incorporated into a "master agreement" that provides for releases, (in the form of a purchase order or other such document), the Contract shall include said releases.

(b) "SAC" means SOLON America Corporation. If a subsidiary or affiliate of SAC is identified on the face of the PO then "SAC" means that subsidiary or affiliate.

(c) "SAC Procurement Representative" means a person authorized by SAC to administer and/or execute this Contract as set forth in the PO.

(d) "Seller" means the Party identified on the face of the PO with whom SAC is contracting.

(e) "Work" means all required articles, materials, supplies, goods and services constituting the subject matter of this Contract.

2. ACCEPTANCE.

(a) This Contract constitutes the entire agreement between the Parties and integrates, merges, and supersedes any prior offers, negotiations, understandings and agreements, written or oral concerning the subject matter hereof. Except as otherwise stated herein, the terms and conditions contained in the Contract shall prevail notwithstanding any different, conflicting or additional terms and conditions which may appear on any quotation or any other document. No course of prior dealing between the Parties and no usage of trade is relevant to explain the Contract. The Contract may not be modified or supplemented except by written instrument signed by authorized representatives of both Parties.

(b) Seller's acknowledgment, acceptance of payment, or commencement of performance shall constitute Seller's unqualified acceptance of this Contract.

3. APPLICABLE LAW.

(a) This Contract shall be governed by and construed in accordance with the law of the State of Arizona, excluding its choice of law rules.

(b) Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances in performing hereunder, including without limitation, all applicable U.S. export control laws and regulations, and the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, as amended or its State approved counterpart.

4. ASSIGNMENT. Seller shall not assign its rights, duties or obligations hereunder without the prior written consent of SAC.

5. CHANGES.

(a) The SAC Procurement Representative may at any time, by written notice make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, SAC shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only. The provision to Seller of assistance, technical advice or other exchange of information by SAC engineering and technical personnel pursuant to the Work hereunder shall not constitute a change to this Contract and shall not be the basis for equitable adjustment hereunder.

(c) Any claim for an equitable adjustment by Seller under the preceding Section, must be submitted in writing to SAC within thirty (30) days from the date of SAC's notice of the change, unless the Parties agree in writing to a longer period.

(d) Nothing contained in this Section 5 clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

6. DISPUTES. All disputes under this Contract which are not resolved by mutual agreement may be decided by recourse to an action at law or in equity. Venue for any such action shall be any court of competent jurisdiction located in Pima County, Arizona. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by SAC.

7. EXTRAS. Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

8. FURNISHED PROPERTY. SAC may provide to Seller property owned by either SAC or its customer ("Furnished Property"). Furnished Property includes any equipment, raw materials, parts, subassemblies, packaging materials, accessories, and partially or completely finished goods provided to Seller by SAC in connection with the Work to be performed for SAC. Furnished Property shall be used only for the performance of this Contract. Title to Furnished Property shall remain in SAC or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show SAC's ownership thereof. Except for reasonable wear and tear, Seller shall be responsible for any damage to, or loss, theft or disappearance of any Furnished Property (collectively a "Loss"). Seller shall promptly notify SAC of any Loss and agrees to promptly pay SAC for the cost of repair or replacement of the Furnished Property associated with the Loss. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. At SAC's request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SAC. The costs of any such delivery or disposal shall be the responsibility of Seller unless otherwise agreed to in writing by the Parties.

9. INDEPENDENT CONTRACTOR. Seller is an independent contractor in all its operations and activities hereunder and no provision in this Contract shall be construed to create any other relationship between the Parties. The employees used by Seller to perform hereunder shall be Seller's employees exclusively without any relation whatsoever to SAC. Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its directors officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

10. SAC CONFIDENTIAL INFORMATION. Information provided by SAC to Seller hereunder, whether furnished by drawings, specifications, samples, or orally, is proprietary and confidential. All such information shall at all times remain the property of SAC. In addition to the terms and conditions of the Contract, Seller agrees to comply with the terms of any proprietary information agreement it may have entered into with SAC and to comply with all proprietary information markings and restrictive legends applied by SAC to anything provided hereunder to Seller. Seller agrees not to use any SAC provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of SAC.

11. INSPECTION AND ACCEPTANCE.

(a) SAC, and where applicable, its customer, may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract.

(b) SAC's final inspection and acceptance shall be at the SAC facility. All Work shipped to SAC shall be subject to SAC's inspection within a thirty (30) day delivery period following receipt thereof. SAC's count shall be final on all shipments.

(c) If Seller delivers non-conforming Work, SAC may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to Seller. Seller shall reimburse SAC for any expense incurred in unpacking, inspecting, sorting or reshipping any goods rejected hereunder. Payment for Work before inspection shall not constitute acceptance thereof and is without prejudice to any other remedies SAC may have at law or under warranty with respect to such nonconforming Work.

(d) Seller shall not re-tender rejected Work without disclosing the corrective action taken. Nothing contained in this Section shall be construed to limit any other rights or remedies SAC may have at law or under this Contract.

12. PACKING, SHIPMENT AND DELIVERY.

(a) Unless otherwise specified, all Work is to be boxed, packed and crated in accordance with good commercial practice and no extra charge shall be made by Seller for such boxing, packing, crating, of for insurance or other charges associated with shipping the Work.

(b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the SAC Contract number, item number, dates of shipment. Bills of lading shall include this Contract number.

(c) Delivery shall be made as specified in the PO. Delivery shall not be complete until all Work is delivered hereunder. If delivery is not made in accordance with the delivery schedule, SAC may cancel the PO without liability or penalty.

13. SAC SECURITY INTEREST. In the event SAC makes any advance of monies hereunder, as security for such advance, Seller hereby grants to SAC a continuing security interest in all Work, including, without limitation, machinery, materials, equipment, works in process and any proceeds therefrom, purchased or realized by Seller for the purpose of performing hereunder. The security interest shall attach when the Work, materials, machinery or equipment are identified to the Contract. To the extent required by SAC in its discretion, Seller, at its sole cost, shall execute a UCC-1, financing statement or any other documentation reasonably requested by SAC, and pay all costs necessary to protect said security interest of SAC against the rights of third parties. In the event of a default by Seller in the performance of the Contract, SAC shall have the rights and remedies available against such collateral as provided under the applicable sections of the Arizona Uniform Commercial Code.

14. INSURANCE.

(a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of SAC or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain at its own expense the following insurance with corresponding limits of liability: Workmen's Compensation with the statutory limits; commercial general liability with a \$2,000,000 limit; and automobile liability with a \$1,000,000 limit. Coverages shall be endorsed to include SAC, its directors, officers and employees as insureds with respect to performance of work under the Contract and shall be primary and non-contributory with respect to any insurance or self-insurance programs covering SAC, its directors, officers, or employees; and provide for a waiver of subrogation rights in favor of SAC. Contractor agrees to provide SAC with a certificate of insurance evidencing the coverages required above and stating the policy numbers and inception and expiration dates of all policies. This certificate of insurance shall also provide for thirty (30) days prior notice to the SAC in the event of cancellation of the policy. Seller and its subcontractors shall additionally comply with all SAC site requirements. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier.

(b) If SAC provides Furnished Property to Seller hereunder, prior to the commencement of any work hereunder, Seller shall procure and maintain, at its sole expense, liability insurance sufficient to cover the replacement value of all such Furnished Property. Seller agrees to provide SAC, upon request, with a certificate of insurance evidencing the coverage required in this Section 14(b) and stating the policy numbers and inception and expiration dates of such policy. This certificate of insurance shall also provide for thirty (30) days prior notice to the SAC in the event of cancellation of the policy.

15. **INDEMNIFICATION.** Seller shall indemnify and hold harmless SAC, its directors, officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.

16. **INTELLECTUAL PROPERTY.** Subparagraph (a) hereof is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

(a) Seller agrees that SAC shall be the owner of all right title and interest in all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller (the "Inventions"). Seller will promptly disclose any such Inventions to SAC. Seller hereby assigns and agrees to assign all right, title, and interest in the Inventions to SAC, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at SAC's request and expense, all documentation necessary to perfect title therein in SAC. Seller agrees that it will maintain and disclose to SAC written records of, and otherwise provide SAC with full access to, the Inventions and that all such Inventions will be deemed information of SAC and subject to the protection provisions of Section 10 hereof. Seller agrees to assist SAC, at SAC's request and expense, in every reasonable way, in obtaining, maintaining,

and enforcing patent and other intellectual property protection on the Inventions.

(b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless SAC and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. If any Work becomes the subject of an infringement suit, Contractor, at its option will promptly: (i) procure for SAC the right to continue using the Work; (ii) replace or modify the Work to provide SAC with functionally equivalent non-infringing Work; or (iii) promptly refund the purchase price of the Work.

17. **NEW MATERIALS.** The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

18. PAYMENTS, TAXES AND DUTIES.

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) SAC's receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. SAC shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.

(b) Payment shall be deemed to have been made as of the date of mailing SAC's payment or electronic funds transfer.

(c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

19. **WARRANTY.** Seller warrants that all Work furnished pursuant to this Contract will be delivered to SAC free from any lien or encumbrance or claim of any third party. Seller further warrants that the Work shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship and will pass any mutually agreed upon diagnostics. Except for the warranty of title provided hereunder, the warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if Seller is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the Seller is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, Seller, at SAC's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. If repair or replacement or reperformance of Work is not timely, SAC may elect to return the non-conforming Work or repair or replace Work or reprocur the Work at Seller's expense. All warranties shall run to SAC and its customers. Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.

20. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

21. STOP WORK ORDER. Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from SAC, or for such longer period of time as the Parties may agree. Seller shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage. Within such period, SAC shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with Section 5 hereof, shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

22. TERMINATION FOR CAUSE.

(a) SAC, by written notice, may terminate this Contract in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days to cure any such failure after receipt of notice from SAC. Default involving delivery schedule delays shall not be subject to the cure provision.

(b) In the event of a termination under the preceding Section, Seller shall continue all Work not specifically terminated. SAC shall not be liable for any Work not accepted; however, SAC may require Seller to deliver to SAC any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. SAC and Seller shall agree on the amount of payment for these other deliverables.

(c) If after termination under this Section 22(a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

23. TERMINATION FOR CONVENIENCE.

(a) *Specially Performed or Custom Work:* SAC may terminate part or all of this Contract for its convenience by giving written notice to Seller. SAC's only obligation in such case shall be to pay Seller a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of SAC, using generally accepted accounting principles, have resulted from the termination. Any claim by Seller for charges resulting from such termination shall be submitted to SAC within thirty (30) days from the effective date of the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. In no event shall SAC be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by SAC.

(b) *Other Than Specially Performed Work:* SAC may terminate part or all of this Contract for its convenience by giving written notice to Seller and SAC's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.

(c) In the case any termination for convenience under either Section 23(a) or 23(b), Seller shall continue all Work not specifically terminated thereby.

24. TIMELY PERFORMANCE.

(a) Time is of the essence in the performance of this Contract. If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify SAC, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(b) Unless advance shipment has been authorized in writing by SAC, SAC may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

25. PRECEDENCE. Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order as applicable, including any special terms and conditions; (ii) Any master-type agreement (such as blanket agreements); (iii) these General Provisions; and (iv) any applicable Statement of Work.

26. RELEASE OF INFORMATION. Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of SAC.

27. MISCELLANEOUS. If any action is filed in relation to the Contract, the prevailing party shall be entitled to a reasonable sum for attorney's fees. All notices under this Contract shall be in writing and shall be given to the Parties by personal service (including receipted confirmed facsimile or E-mail), or by certified or registered mail, return receipt requested, or by recognized overnight courier service, to the Parties at the addresses set forth in the PO. All notices sent to SAC hereunder shall be to the attention of the SAC Procurement Representative. All notices shall be deemed given upon the actual receipt thereof. Failure by SAC to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of SAC thereafter to enforce each and every such provision(s). SAC's approval of documents shall not relieve Seller from complying with any requirements of this Contract. The rights and remedies of SAC in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity. Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

28. SURVIVAL. All obligations arising prior to the termination of this Contract and all provisions of this Contract allocating responsibility or liability between SAC and Seller shall survive the termination of this Contract.