

General Terms and Conditions of Sale

1. Acceptance and Scope of these terms

- 1.1 These general terms and conditions of sale ("GTC") shall apply to all sales of goods and services by EMD Performance Materials Corp. ("EMD") to a customer requiring purchase of such goods or services ("Purchaser").
- 1.2 Any withstanding, amending or deviating terms and conditions of Purchaser shall not apply, even if EMD, knowing of such terms and conditions of Purchaser, does not object to them explicitly, and continues to deliver to Purchaser without any objection.
- 1.3 Any of the following shall constitute Purchaser's unqualified acceptance of these GTC: (i) written acknowledgement of these GTC; (ii) issuance or assignment of a purchase order for the product(s) or services thereunder; (iii) acceptance of any shipment or delivery of product(s) or provision of services thereunder; (iv) payment for any of the product(s); or (v) any other act or expression of acceptance by Purchaser.
- 1.4 These GTC shall only apply vis-à-vis commercial customers and with respect to commercial transactions.
- 1.5 These GTC shall apply to all transactions (including future ones) between EMD and Purchaser in the version current at the time of the conclusion of such transaction, even if their application has not been expressly agreed again.
- 1.6 EMD shall have the right to amend these GTC subject to prior written notification of Purchaser and the envisaged amendments shall become effective unless Purchaser objects within two (2) weeks after receipt of such notice.

2. Conclusion of Contract, Orders

- 2.1 Unless otherwise agreed, any offers of EMD are subject to change.
- 2.2 Any binding contract on the sale of goods or services requires either (i) an offer of EMD explicitly marked as binding or (ii), upon any Purchaser's order (oral or otherwise), an order confirmation of EMD in writing, and Purchaser not immediately objecting to such order confirmation. The content of the respective contractual relationship and the scope of delivery as laid down in any binding offer or order confirmation from EMD shall be legally binding.
- 2.3 Unless otherwise agreed, any advice given to Purchaser before placing the order shall be non-binding; the same shall apply to any specifications of samples and specimens. It remains up to Purchaser to satisfy itself that the goods are suitable for its purposes. EMD may, at Purchaser's request, provide technical assistance, advice and information with respect to the products, if and to the extent that such advice, assistance or information is conveniently available. It is expressly agreed, however, that EMD is under no obligation to provide such



technical assistance and/or information. To the extent such technical assistance and/or information is provided to Purchaser, the disclaimers and limitations of liability contained herein shall be applicable.

- 2.4 If the order value is less than \$2,000 net (i.e. without sales tax applicable according to legal provisions), EMD reserves the right to charge a flat-rate handling fee of \$200.
- 2.5 If Purchaser's order is in the form of a blanket purchase order, framework contract or other similar arrangement whereby multiple shipments are contemplated, on or before two (2) business days prior to the end of the calendar month, Purchaser shall provide to EMD written instructions for the quantity of products required during the next calendar month. EMD shall have no obligation for any quantities for which Purchaser has not provided such instructions.

3. Deliveries, Returned Products

- 3.1 EMD's obligation to deliver to Purchaser the product ordered is subject to EMD's receiving correct and timely delivery itself from its suppliers. This condition shall only apply in case EMD is not responsible for non-delivery, in particular if it has placed a corresponding order with its suppliers. If delivery is not made by its supplier to EMD, (i) EMD shall notify Purchaser immediately, and (ii) EMD is entitled to withdraw from the contract, with any payments of Purchaser to be refunded immediately.
- 3.2 Delivery times given by EMD in offers and order confirmations are non-binding, except otherwise explicitly agreed. However, if binding delivery deadlines have been agreed, EMD's obligation to comply with the agreed delivery period shall be subject to the prompt fulfillment of contractual duties on the part of Purchaser, in particular such duties as the payment of any agreed amounts and, if applicable, the provision of agreed security. If Purchaser fails to meet its contractual duties, EMD shall have the right to extend the delivery period. EMD's reserves the defense of non-fulfillment of the contract.
- 3.3 Except otherwise explicitly agreed, if a product ordered has to be dispatched, this is carried out from EMD's respective warehouse on the account and at the risk of Purchaser. EMD is free to choose the carrier and the forwarding company and the means of transport. EMD reserves the right to choose the method of packaging. Partial deliveries (installments) are permissible and may be invoiced by EMD immediately. The risk of accidental loss of the product to be delivered passes from EMD to Purchaser on dispatch from the warehouse even if delivery is made carriage paid.
- 3.4 Title and risk is transferred upon dispatch of delivery. EMD is not obliged to insure the ordered product, or to have it insured, against damage in transit. Loss of or damage to the products, after the risk of such loss or damage has passed to Purchaser, does not discharge Purchaser from its obligation to make full payment of the purchase price. If the dispatch of the product ordered is delayed owing to circumstances for which Purchaser is responsible (including a lack of acceptance), the risk of accidental loss of the products to be delivered (also while in storage at EMD) passes to Purchaser from the time of the delay on. In case of such delays, any costs incurred by EMD due to the delay in delivery (in particular warehouse costs and charges) must be borne exclusively by Purchaser. In case of accidental loss, EMD is



- released from its performance obligation; however, Purchaser remains obliged to make full payment.
- 3.5 Purchaser may, notwithstanding any contractual or statutory rights, not cancel any binding order or return purchased products without EMD's prior express written consent, such returns being subject to a restocking charge. Products subject to governmental regulations (e.g. European Medicine Agency, FDA) and/or processing requirements (e.g. cGMP) are not eligible for cancellation or return.
- 3.6 EMD is entitled to withdraw from the contract if it becomes apparent that Purchaser is not creditworthy, in particular in case of (i) a protest regarding a bill of exchange or a cheque occurs, (ii) payments by Purchaser stop, (iii) an unsuccessful enforcement attempt against Purchaser, or in case of an oath of disclosure; such event must not necessarily have occurred between EMD and Purchaser, or (iv) it becomes apparent that Purchaser has provided inaccurate information regarding its creditworthiness and this information is of considerable importance.
- 3.7 Irrespective of the reason for any return of products, any return must be coordinated with EMD prior to return, and all products to be returned must include EMD's approved product return authorization form. EMD reserves the right to request a disposal instead of return. Title to the returned products, if already acquired by Purchaser, shall retransfer to EMD upon delivery of the products to EMD's facilities. The products shall be returned in their original packaging with the original EMD label affixed, and unaltered in form and content. Where applicable, Purchaser agrees to provide EMD with interim product temperature and other relevant data on storage; Purchaser furthermore agrees to package products with proper refrigerant to maintain required temperatures during transit.
- 3.8 EMD may define certain products as Custom Made-To-Order ("CMO"). Purchaser must provide EMD with product specifications prior to the start of manufacturing a CMO product. EMD and Purchaser shall agree on all respective production and testing techniques prior to the start of manufacturing a CMO product. Purchaser must provide a purchase order detailing product and delivery schedule for reserved products. Purchaser shall purchase the entire lot of the CMO without regard to volume. Purchase orders for a CMO product(s) are not cancelable.
- 3.9 Unless otherwise agreed between the parties, returnable packaging or containers are the property of and must be promptly returned to EMD in good condition, and in any event within 90 days of delivery of the products. EMD reserves the right to charge Purchaser for any damage to the packaging or containers and any sums paid to replace packaging beyond reasonable repair. If Purchaser fails to return the packaging or containers in good condition and/or within the timeframe for return, EMD may retain any deposit paid by Purchaser, or if no deposit has been paid, EMD may invoice Purchaser for a reasonable amount on account of the lost or damaged packaging. Packaging or containers for the products, whether disposable, returnable, or otherwise, are intended only for the delivery and temporary storage of the product delivered in them. Any other use of such containers may be hazardous or unlawful. EMD EXCLUDES AND DISCLAIMS ALL LIABILITY IN RESPECT OF ANY



OTHER USE MADE BY PURCHASER OF SUCH PACKAGING OR CONTAINERS, AND PURCHASER ACCEPTS THAT ANY SUCH ACTIONS ARE UNDERTAKEN BY IT ENTIRELY AT ITS OWN RISK.

4. Prices, Taxes, Payment, Late Payments

- 4.1 Unless otherwise specified in EMD's order confirmation, the price for Purchaser's order shall be charged in accordance with the applicable prices at the delivery date.
- 4.2 Unless otherwise specified in EMD's order confirmation offer, if any, or its order confirmation, all prices are given in USD.
- 4.3 Any tax, duty, custom or other fee of any nature imposed in connection with this transaction by any governmental or quasi-governmental authority shall be paid by Purchaser in addition to the price quoted or invoiced. In the event EMD is required to prepay any such tax, Purchaser shall fully reimburse such tax prepayment to EMD.
- 4.4 Unless otherwise specified in EMD's order confirmation, the purchase price must be paid by Purchaser within 30 days from the invoice date without deduction to the bank account specified by EMD. Credit card payments are subject to acceptance by EMD and limited to a total order value equal to or less than ten thousand USD (\$10,000) and deductions will be made at time of order placement by Purchaser.
- 4.5 In case of delay of payment by Purchaser EMD reserves the following rights, notwithstanding further statutory rights: (i) EMD may charge an interest on all amounts due and unpaid after due date at the maximum rate permitted by applicable law until payment is received, in any event at least 8% p.a. above the published prime rate of Bank of America or its successor, and (ii) EMD may terminate the order or suspend any further deliveries to Purchaser.
- 4.6 Any right of Purchaser to withhold payment or to set off any amounts due against counterclaims on his part, e.g. pricing or invoicing complaints, shall be explicitly excluded, unless such counterclaims are uncontested or a legal title exists.
- 4.7 In case EMD has a right to withdraw from the contract, all payment claims against Purchaser, regardless of their legal basis, are due for immediate payment.

5. Additional Obligations of Purchaser

- 5.1 Purchaser acknowledges that there are hazards associated with the use of some products, that it understands such hazards and that it is the responsibility of Purchaser to warn and protect all those exposed to such hazards.
- 5.2 Purchaser is also under the obligation to inform EMD immediately of any risks resulting from products it becomes aware of.
- 5.3 Purchaser shall at all times be solely responsible for: (i) obtaining any necessary intellectual property permission for the use of the product, (ii) compliance with any and all applicable regulatory requirements and generally accepted industry standards, (iii) conducting all necessary testing and verification, including for fitness for the intended purpose, prior to the use of product(s) purchased from EMD, (v) compliance with legal requirements in case products are to be disposed by Purchaser.
- 5.4 Purchaser shall indemnify and hold EMD, its corporate affiliates, agents, employees, and representatives harmless from and against any and all claims, damages, losses, costs or



expenses (including attorney's fees) arising in connection with Purchaser's sale or use of the products, resulting from Purchaser's breach of the provisions and representations contained in these GTC, or arising from the negligence, recklessness or misconduct of Purchaser.

6. Warranties

- 6.1 With respect to all products to be delivered, the parties agree on the following scope of the warranties of EMD:
- 6.1.1 The products delivered by EMD correspond to the applicable published specifications.
 - 6.1.2 The specifications only relate to the substances and values specified, and to pharmacopoeia data and information on E numbers if applicable. Statements with regard to suitability only apply when explicitly agreed by the parties
 - 6.1.3 Any data which is based on EMD's testing procedures, may only be compared to testing following the same procedures. Any product data listed in the catalogue or any product information provided is intended for informational purposes only and does not represent a binding statement with respect to the characteristics of the products delivered; EMD may not be held liable with respect to the accuracy of the product data provided.
 - 6.1.4 EMD does not assume any warranty for the use of the delivered products in pharmaceutical, cosmetic or food preparations, unless such use has specifically and expressly been approved by EMD. EMD makes no warranty of merchantability or of fitness for a particular purpose.
 - 6.1.5 Unless otherwise expressly stated in the product data or product documentation sheets, EMD products have not been tested for safety or efficacy.
 - 6.1.6 No agent, employee or other representative has the right to modify or expand EMD's standard warranty applicable to the products or services to make any representations as to the products other than those set forth in EMD's applicable published specifications and any such affirmation, representation or warranty, if made, should not be relied upon by Purchaser and shall not form a part of this contract.
- 6.2 No warranty provided by EMD will apply in the event of:
- 6.2.1 failure to use or maintain the products in accordance with any instructions, specifications, use statements or conditions of use made available by EMD in writing to Purchaser, such information to include but is not limited to product data, product information, limited use information, limited use label licenses;
 - 6.2.2 use of products, that, according to documentation accompanying the product(s), are intended for research use only, for any other purpose, which includes but is not limited to, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses or any type of consumption by or application to humans or animals;
 - 6.2.3 any modifications, upgrades, maintenance or other servicing by a third party that is not approved by EMD;
 - 6.2.4 normal wear and tear of the products, lack of proper maintenance or incorrect stocking conditions; or
 - 6.2.5 use of the products beyond the shelf life or expiration date of the product as set forth in the applicable published specifications or labels of such products.



- 6.3 The parties agree on the following duties of Purchaser in relation to inspections:
- 6.3.1 Purchaser shall inspect the delivered products immediately upon receipt and without delay notify EMD in writing or text format of any obvious defects or missing goods. Defects in the products which, despite immediate and proper examination by Purchaser, only become apparent at a later point in time must be notified to EMD in writing or in text format by Purchaser immediately upon discovery.
- 6.3.2 Complaints notified to forwarding agents or third parties do not constitute a notification in due form and shall therefore be deemed void.
- 6.3.3 In the event Purchaser claims non-conformance of a hazardous product, EMD shall have the right to inspect such products on Purchaser's premises. As an alternative, the Parties may seek confirmation with respect to the non-conformance of the product in question by way of an analysis carried out by a third-party laboratory; such third-party laboratory must be acceptable to both parties and carry out the respective analysis within a reasonable time frame. If the results of the analysis confirm the non-conformance of the products, the respective costs shall be borne by EMD; if the analysis does not confirm non-conformance of the product, the costs for analysis shall be borne by Purchaser.
- 6.3.4 EMD shall assume no warranty or liability for any complaints of Purchaser that do not comply with the stipulations of this Clause 6.3.
- 6.4 In case of any complaint in accordance with Clause 6.3 about warranties, subject to the limitation period in 6.5, EMD's sole obligation shall be to repair or replace, at its option, the applicable product or part thereof. If after exercising reasonable efforts, EMD is unable to repair or replace the product or the part, then EMD shall refund to Purchaser all monies paid for such applicable product or part.
- 6.5 The warranties set forth this Clause 6 shall be provided by EMD for a period of one (1) year from the shipment of the products. A shorter limitation period shall apply if and to the extent (i) agreed between the parties and permitted by applicable laws, or (ii) the shelf life or the expiration date of the product to be delivered – in accordance with the specifications or labels of such product – is shorter than 12 months.
- 6.6 OTHER THAN THE WARRANTIES PROVIDED HEREIN, EMD MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. EMD MAKES NO REPRESENTATION OR WARRANTY THAT THE PRODUCTS OR THE USE THEREOF WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

7. Limitation of Liability of EMD

- 7.1 Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of Purchaser or others arising out of the presence or use of the products or EMD's provision of services, including infringement of any third party intellectual property rights resulting from specific use of the products by Purchaser.
- 7.2 Except as expressly provided otherwise herein, EMD shall not indemnify nor be liable to Purchaser, Purchaser's customers, successors, or to any person or entity for any claims,



damages or losses arising out of the sale or use of products or the provision of services, where liability is premised upon any theory including, but not limited to, warranty, negligence or strict liability.

- 7.3 EMD SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS OR SERVICES INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, LOSS OF REVENUE OR PROFITS, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR ANY LIABILITY OF BUYER TO A THIRD PARTY. THE TOTAL LIABILITY OF EMD UNDER THESE TERMS AND CONDITIONS OF SALE SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES INVOLVED. All claims must be brought within one (1) year of delivery, regardless of their nature.

8. Force majeure

- 8.1 Neither party shall be responsible and held liable for any delay or default in the performance of its obligations under their mutual contract to the extent and as long as this default is caused by an event beyond its control (force majeure). The same shall apply to contractual breaches on the part of suppliers caused by force majeure. An event of force majeure shall, without limitation, in particular include: (a) a state of war or civil war, declared or undeclared, (b) fire, (c) natural disasters like floods, storm, etc., (d) general shortage of raw materials or inability to obtain equipment or materials, (e) restrictions on energy consumption, (f) law-making or governmental decisions, embargos, export and import restrictions on shipping or delivery, (g) strikes, lockouts or labor disputes of any kind (whether relating to its own employees or others), (h) accidents, (i) sequestration, or (j) any production failure beyond reasonable control.
- 8.2 Force majeure shall not be an excuse to delay payments.
- 8.3 If either party is affected by one (or more) of the events described under 8.1 above, it shall promptly notify the other party thereof, stating the nature of the event, its estimated duration, and actions being taken to avoid or minimize its effects
- 8.4 Neither party hereto shall be under an obligation to act upon any demand or request to bring to an end any strike or other concerted act of workmen.
- 8.5 If, at Purchaser's request or for any reason for which Purchaser is responsible, the production or shipment of products is delayed, EMD may immediately invoice Purchaser for the products produced as well as costs and expenses incurred up to the time of the delay.
- 8.6 Each party shall have the right to cancel the contract by means of termination in writing or in text format if the performance thereof is prevented for more than six months according to Clause 8.1.

9. Compliance Requirements

9.1 Export Controls, Embargos

Purchaser acknowledges that the merchandise covered by this contract is subject to the export control laws (including in particular but not limited to embargos and economic sanctions) of the country from which shipment is made, as well as possibly those of the United States. Purchaser further acknowledges that, depending on the product, its country of



destination, its designated end use, and the identity of the parties to the transaction, such laws may require Purchaser, either for the further transfer or reexport of the product being exported to it by EMD, or for the transfer of any item into which Purchaser may incorporate such product, to seek and obtain export licenses/authorizations issued pursuant to those laws.

Where Purchaser reexports the merchandise in question, Purchaser is the legally responsible party for determining its correct export classification, and for obtaining any necessary export licenses/authorizations. As a courtesy and without accepting any liability whatsoever, to aid Purchaser in ascertaining the export classification and the potential applicability of U.S. export control laws on its invoice, EMD shall provide Purchaser upon request with (i) what it believes is the correct classification, under local and U.S. laws, of the product being shipped and (ii) a statement indicating the country of origin of the product. Purchaser agrees to hold EMD harmless from any and all liabilities or costs incurred by EMD or its affiliates arising for any reason from or in connection with any export, import, regulatory, governmental or treaty violations in any jurisdiction, whether intentional or unintentional.

9.2 Pharmaceuticals, Cosmetics, Food

With respect to the production of pharmaceutical, cosmetic or food preparations, Purchaser shall be solely responsible for compliance with customary medical requirements, general manufacturing practice guidelines and applicable laws, orders and other provisions.

9.3 REACH

In the event Purchaser wishes to purchase chemicals from EMD, the following shall apply: Purchaser is aware of and agrees to comply with all its obligations under the REACH Regulation (EC) No. 1907/2006. Purchaser shall reimburse EMD for all expenses incurred by EMD in connection with Purchaser's notification to EMD of any use pursuant to Article 37.2 of the REACH Regulation (EC) No. 1907/2006 that necessitates an update of the registration or the chemical safety report or triggers some other obligation under the REACH Regulation. EMD assumes no liability for delays in delivery resulting in this context. If, for environmental or health protection reasons, EMD does not classify the use envisaged by Purchaser as an identified use, EMD may withdraw from the contract unless Purchaser informs EMD that it will abstain from the envisaged use.

9.4 Data Protection

EMD will request, process and use personal data (mainly name and business addresses of the contact person) from Purchaser to manage Purchasers' requests, claims, orders or repairs and the continuing relationship management to Purchaser. Some of those data processing activities are handled on behalf of EMD by Merck KGaA, Darmstadt, Germany, its affiliates or external service providers. These companies may be based worldwide, including areas outside the European Union like the U.S.A. In any case of a data transfer of personal data the legal data protection requirements for EMD are ensured. Furthermore EMD will transfer these data to authorities, if there is an existing legal obligation for EMD to do so. Individuals have the right to access their data processed by EMD and have such data updated. Individuals, subject to the legal requirements of data protection laws, may also require that



their data be deleted or blocked. For further information see EMD's Security & Privacy policy posted at www.emd-performance-materials.com.

9.5 Anti Corruption Laws, U.S. Foreign Corrupt Practices Act and UK Bribery Act

Purchaser acknowledges that: (a) EMD is a United States entity and is therefore subject to the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America, 91 Statutes at Large, Sections 1495 et seq. (the "FCPA"); and, (b) EMD is subject to other bribery and corruption laws, including without limitation the UK Bribery Act and local laws for the jurisdictions covered hereunder. Under the FCPA it is unlawful to pay or to offer to pay anything of value to foreign government officials, government employees, political candidates, or political parties, or to persons or entities who will offer or give such payments to any of the foregoing, in order to obtain or retain business or to secure an improper commercial advantage. Purchaser further acknowledges that it is familiar with the provisions of the FCPA, the UK Bribery Act and applicable local bribery and corruption laws, and shall not take or permit any action that will either constitute a violation under, or cause EMD to be in violation of, the provisions of the FCPA, the UK Bribery Act or applicable local bribery and corruption law.

10. Miscellaneous

10.1 Governing Law

Unless explicitly otherwise agreed, any contract between EMD and Purchaser shall be subject to the laws of the Commonwealth of Pennsylvania, without giving effect to its rules on conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 shall not apply.

10.2 Place of Performance

The place of performance for all claims resulting from the contract concluded between Purchaser and EMD is the registered office of EMD's headquarters in Philadelphia, PA.

10.3 Venue for Disputes

The venue for all disputes between the Parties shall be the courts located in Philadelphia, Pennsylvania.

10.4 Entire Agreement

These GTC shall constitute the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the sale of EMD products and the provision of EMD services and supersedes all prior and contemporaneous understandings or agreements of the parties.

10.5 Modification, Written Form

Unless otherwise agreed in these GTC, any changes/amendments and/or additions to these GTC, including to this clause 10.5, must be agreed in writing between the contract parties in order to be effective.

10.6 Notices

Unless the text format is expressly admitted thereunder, any notices required or permitted to be given by either party to the other under these GTC shall be made in writing and shall be



sent by prepaid recorded delivery, special delivery or registered mail to that other party at its registered office or principal place of business or such other address as indicated by it in connection with this provision.

10.7 Severability

If individual provisions of these GTC are or become fully or partially ineffective, the remaining provisions of the GTC shall not be affected thereby. This also applies if an unintended omission is found in the contract. A fully or partially ineffective provision shall be replaced or an unintended omission in the GTC shall be filled by an appropriate provision which, as far as is legally possible, most closely approximates to the original intention of the contractual parties or to what they would have intended according to the meaning and purpose of these GTC had they been aware of the ineffectiveness or omission of the provision(s) in question.

10.8 Assignability

Orders are not assignable or transferable, in whole or in part, without the express written consent of EMD.

10.9 Publicity

Any marketing, promotion or other publicity material, whether written or in electronic form, that refers to EMD, its affiliates, their products, or to these GTC must be approved by EMD prior to its use or release.

10.10 Confidentiality

Purchaser shall not, without EMD's written consent, disclose any documents, drawings, schematics, plans, designs, specifications, confidential information, know-how, discoveries, production methods and the like that are marked confidential, proprietary or the like (herein referred to as "technical information") furnished to Purchaser by EMD, or on EMD's behalf, for the performance of this agreement, to any person other than personnel of Purchaser. Purchaser shall take reasonable precautions against any such technical information being acquired by unauthorized persons and shall not employ any such technical information for its own use for any purpose whatsoever, including filing any patent applications disclosing or based on EMD's technical information or publishing the technical information in any form, except in the performance of this agreement. EMD shall retain title to all such technical information and Purchaser shall, at EMD's request or upon completion of this agreement, return or deliver all such tangible technical information to EMD. The term "technical information" as used herein shall not include information which is generally published or lawfully available to Purchaser from other sources or which was known to Purchaser prior to disclosure thereof to Purchaser by EMD or on EMD's behalf.

10.11 Proprietary Rights

EMD, or its affiliates, is the owner of certain proprietary brand names, trademarks, trade names, logos and other intellectual property. Except as otherwise expressly permitted by EMD, no use of EMD's or its affiliates' brand names, trademarks, trade names, logos or other intellectual property is permitted, nor the adoption, use or registration of any words, phrases or symbols so closely resembling any of EMD's or its affiliates' brand names, trademarks, trade names, logos or other intellectual property as to be apt to lead to confusion or uncertainty, or to impair or infringe the same in any manner, or to imply any endorsement by



EMD of another entity's products or services. If the products are to be produced or supplied by EMD based in whole or in part on drawings, designs, instructions or other information provided by Purchaser, Purchaser warrants that the use of such drawings, designs, instructions or other information by EMD in producing and supplying the products will not infringe the rights of any third party and Purchaser will indemnify EMD against any costs claims expenses damages and other liabilities arising as a result of such designs drawings or other information infringing or allegedly infringing the rights of any third party.

10.12 Waiver of Breach

The waiver by either party at any time to require performance by the other of any provision of these GTC shall not operate as a waiver of such provision at any other time.

10.13 Typographical Errors

Stenographic, clerical or computer errors on the face of any EMD invoice shall be subject to correction by EMD.

10.14 Independence of the Parties

Nothing in this agreement shall be deemed to constitute a partnership between the parties or to make either party the agent of the other party for any purpose. Furthermore, each of the parties shall remain solely responsible for its own acts, statements, engagements, performances, products (in the case of EMD subject to the other terms of the GTC in relation to the products), and personnel.

10.15 Third Parties

Nothing in this document is intended to create any rights in third parties against EMD.

11. Representations and Warranties for Services

11.1 Services may be provided by EMD at Purchaser's facility, EMD site or an EMD authorized third party site. EMD warrants that it shall provide services in a professional and workmanlike manner, consistent with average standards of workmanship and materials then prevailing in the trade (the "Service Warranty") for ninety (90) days from completion by EMD of the portion of services at issue. Purchaser agrees that EMD, in its sole discretion, may provide services through appropriately trained and qualified third party representatives. In the case of a breach of the Service Warranty, the parties agree that the sole remedy available under the agreement shall be repeat performance by EMD of the portion of such services that constitutes or gives rise to the breach. If in its reasonable opinion EMD is unable to repeat the performance of such services, the parties agree that the sole remedy in such a case is for EMD to refund to Purchaser all sums paid for the portion of such services. For the avoidance of doubt, the parties agree that EMD shall not be liable for any consequential, incidental, indirect, economic or special loss or loss to property caused by any service or part thereof supplied under this agreement or subject to any penalty, by late delivery of any such service or part thereof, whether or not the aforementioned loss is due to the negligence of EMD. In any case, the maximum aggregate liability that can be attributed to EMD under this agreement is expressly limited to an amount equal to the sums effectively paid to EMD by Purchaser for services under this agreement; provided that any liability for Purchaser's



products in process shall be excluded. EMD makes no other express or implied warranty. EMD will not be in breach of this agreement or otherwise liable to Purchaser for any delay in performance or any non-performance of any obligations under this agreement (and the time for performance will be extended accordingly) of and to the extent that the delay or non-performance is owing to Force Majeure.

- 11.2 In the event that Purchaser is purchasing services on behalf of a third party, or in relation to products owned by a third party or located at the premises of a third party, Purchaser represents and warrants that it has proper legal authority to purchase such services with respect to such third party. Purchaser shall indemnify and hold EMD, its corporate affiliates including EMD and any entity under majority control of EMD, agents, employees, and representatives, harmless from and against any and all claims, damages, losses, costs or expenses (including attorney's fees) caused by or resulting from any third party claim relating to the provision of any services by EMD.

California Transparency in Supply Chains Act (S.B. 657) Statement

EMD Performance Materials Corp. strongly believes in the importance of international labor and human rights standards and opposes any and all illegal and unethical treatment of people, including any acts of slavery or human trafficking. We do not knowingly employ slaves or trafficked persons. In our written contracts and terms and conditions of purchase, we require our suppliers to comply with all applicable laws. Further, our internal supplier audit program evaluates and addresses risks of slavery and trafficking. In addition, in 2012, we will investigate opportunities (1) to require direct suppliers to certify in writing that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business, (2) to maintain internal accountability standards and procedures for employees or contractors failing to meet our standards regarding slavery and trafficking, and (3) to provide company employees and management, who have direct responsibility for supply chain management, with training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products. To read the full Senate Bill, click [here](#).

