



TERMS AND CONDITIONS OF PURCHASE

1. **General.** Unless otherwise prohibited by applicable law, these Terms and Conditions of Purchase (the “**Terms**”) are incorporated into and form a part of the purchase order and/or agreement issued by a Larzep entity, and/or its affiliates as specified in the purchase order and/or agreement, or revision thereto (the “**Purchase Order**”). The terms “**Buyer**” and “**Seller**” refer to the entities designated as such on the Purchase Order. The term “**Supplies**” refers to the products, supplies, equipment and/or services to be provided to Buyer by Seller as specified on the Purchase Order.

2. **Terms of the Purchase Order; Offer/Acceptance.** The Purchase Order is an offer by Buyer to purchase the Supplies from Seller on the terms of the Purchase Order. Buyer shall have the right to rescind the Purchase Order at any time prior to Seller’s acceptance. Seller shall be deemed to have accepted the Purchase Order and a binding contract formed upon the earliest of: (a) Seller commencing work or performance with respect to any part of the Purchase Order; (b) Seller delivering written acceptance of the Purchase Order to Buyer; (c) any conduct by Seller that fairly recognizes the existence of a contract for the purchase and sale of the Supplies; or (d) three (3) days following Buyer’s delivery of the Purchase Order to Seller. **The Purchase Order is limited to and conditional upon Seller’s acceptance of the terms of the Purchase Order.** In the event Seller accepts Buyer’s Purchase Order other than by written acceptance pursuant to subsection (b) above, Buyer may cancel the Purchase Order in its sole and absolute discretion, without payment of any kind to Seller, if Seller refuses to provide written acceptance of the Purchase Order within two (2) business days following Buyer’s written or oral request for such confirmation. The following documents are incorporated into and shall be part of the Purchase Order: (i) any executed supply or corporate agreement between Buyer and Seller; (ii) prints and specifications for the Supplies; (iii) Buyer’s policies that have been communicated to Seller, as revised by Buyer from time to time; and (iv) any written agreement between Buyer and Seller which provides therein that it shall be part of the Purchase Order. The purchasing terms and conditions of Buyer’s customer will also be incorporated into and shall be part of the Purchase Order if such are identified by Buyer.

3. **Quantity.** From time to time, Buyer may provide Seller with volume and/or quantity forecasts or projections for Buyer’s Supplies needs. Seller acknowledges that the projections, unlike a Purchase Order, are for planning purposes only and are not binding on Buyer. Seller acknowledges and agrees that Buyer makes no representation, warranty or guaranty of any kind or nature whatsoever as to the accuracy of the projections.

4. **Delivery; Purchase Orders.** Seller shall manufacture and ship Buyer’s requirements for the Supplies in such quantities, prices, and at such time as identified by Buyer as firm orders in the Purchase Order, or if a blanket Purchase Order, in scheduling agreements, manifests or other similar releases that are transmitted to Seller from time to time during the term of the Purchase Order, and after consideration by Buyer of agreed upon lead times. Time and quantities are of the essence under the Purchase Order. Seller agrees to 95% on-time delivery of the quantities and at the times specified by Buyer as set forth in the Purchase Orders. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries, excess deliveries or any other delivery that is not a 95% on-time delivery (“**Non-conforming Deliveries**”). If Seller fails to achieve a fill rate of at least 95% per Purchase Order by the due date specified on the Purchase Order, Buyer may chargeback an amount equal to 5% of the Purchase Order cost with a minimum of \$100, as liquidated damages and not as a penalty. The payment of liquidated damages shall not relieve Supplier from its obligations under these Terms (including the obligation to deliver the Supplies). Buyer may change the timing of delivery of previously scheduled shipments or direct temporary suspension of scheduled shipments from time to time in its sole and absolute discretion. Unless otherwise agreed upon by Buyer or stated in the Purchase Order, all pricing and shipments are to be made FOB (as defined in *Incoterms 2010* published by the International Chamber of Commerce). Different Incoterms may be applicable depending upon Buyer’s affiliate location. Seller warrants full and unrestricted title to Buyer for the Supplies delivered by Seller, free and clear of any and all liens, restrictions, reservations, security interests or encumbrances. Seller shall, among any other instructions that may be contained in any supply manuals provided by Buyer to Seller properly pack, mark, and ship the Supplies according to the requirements of Buyer, the involved carriers and the country of destination. Before the Supplies are shipped, Seller shall give Buyer sufficient warning in writing of any hazardous or restricted material that is a substance or material or is otherwise part of the Supplies. Seller shall comply with all applicable national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including, but not limited to the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC any successor law, or any other similar applicable law or regulation (domestic or international).

5. **Price; Payment Terms.** The purchase price for the Supplies is set forth in the Purchase Order. Buyer will pay invoices within the first 10 days following the Buyer’s fiscal quarter-end (August, November, February and May). Unless otherwise agreed to by the parties, Buyer may pay invoices via electronic payment method (ACH), credit card or check. Credit card payments along with remittance advice are delivered via secure file protocol using dynamic credit card numbers issued by an industry leading payment provider. Seller acknowledges and agrees that Seller’s financial condition, insolvency and/or failure to timely pay its suppliers or other creditors may create a disruption in the supply chain. In the event Buyer elects in its sole and absolute discretion to pay any of Seller’s obligations in order to avoid or cure a disruption in the flow of the Supplies to

Buyer, Buyer shall have the right to withhold from and set off against any funds due to Seller from Buyer the aggregate amount paid in respect of Seller’s obligations and, if such right of setoff is insufficient for Buyer to immediately recover all such amounts, Seller shall pay to Buyer the remaining balance within ten (10) days of Buyer’s payment.

6. **Quality.** Seller shall conform to all quality control guidelines, standards, and inspection systems Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains supplies or services it uses to produce Supplies. Following rejection of the non-conforming Supplies, Seller shall in Buyer’s sole and absolute discretion, without prejudice to any other right or remedy of Buyer: (i) accept the return within the time frame as requested by Buyer, at Seller’s sole expense, of the Supplies and refund to Buyer the full invoice price plus all transportation and other charges associated with the non-conforming Supplies; (ii) replace the non-conforming Supplies with conforming Supplies, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller; or (iii) at Seller’s sole expense, correct at any time prior to shipment from Buyer’s plant the Supplies that fail to meet the requirements of the Purchase Order.

7. **Warranty.** Seller warrants to Buyer, Buyer’s customer and their respective customers, successors and assigns that the Supplies shall: (i) be new and conform in all respects to the Purchase Order and to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise obtained by Seller; (ii) be free from all defects in design, workmanship and/or materials and be of highest quality and workmanship; (iii) be selected, designed, manufactured, assembled and packaged by Seller based upon Buyer’s stated use and be fit and sufficient for the purposes intended by Buyer; (iv) conform to all applicable laws in countries where the Supplies (or Buyer’s products into which the Supplies are incorporated) are to be sold; (v) for all Supplies which consist of services, Seller further warrants that its work shall be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed to with Buyer and otherwise consistent with the highest industry standards. All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. The warranty period shall run to the latest of the following: (i) thirty-six (36) months from the date Buyer accepts the Supplies; (ii) the warranty period provided by applicable law; (iii) the warranty period offered by Buyer to Buyer’s customer; or (iv) the warranty period Buyer’s customer offers to end-users of the products or for the products into which the Supplies are incorporated.

8. **Remedies; Indemnification Obligation.** The rights and remedies reserved to Buyer in each Purchase Order shall be cumulative with and in addition to all other or legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer as a result of Seller’s: (i) breach of any representation or warranty set forth in the Purchase Order; (ii) failure to timely deliver conforming or otherwise non-defective Supplies; and/or (iii) failure to comply with the Purchase Order, even if Seller has cured the breach. Seller shall defend, indemnify and hold harmless Buyer, Buyer’s customer and the end-users of the products sold by Buyer or the end users of the products which incorporate the Supplies and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys’ and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller’s agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller’s representations or other terms and conditions of the Purchase Order (including any part of these Terms) including the cost of any remedial actions.

9. **Changes.** Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of the Supplies (“**Buyer’s Specs**”). Seller shall not make any changes to the Buyer’s Specs without the prior written consent of Buyer.

10. **Customs Regulations.** Seller shall comply with all applicable import and export laws and regulations, including any recommendations or requirements of the United States Customs and Border Protection and/or similar domestic or international organizations.

11. **Force Majeure.** Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively “**Force Majeure**”). Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential Force Majeure.

12. **Termination.** Buyer may terminate immediately the Purchase Order for cause, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of the Purchase Order at any time and for any reason upon seven (7) days written notice to Seller.

13. **Insurance.** Seller shall maintain and require its subcontractors to maintain the following insurance coverage (or any other corresponding international policies): (i) comprehensive general liability insurance; (ii) comprehensive automobile liability insurance; (iii) business interruption insurance; (iv) workers compensation and employer’s liability insurance covering all employees engaged in the performance of this



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Purchase Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations; and (v) such other insurance coverage as may be requested from time to time by Buyer in its sole discretion. In each case, Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or "additional insured(s)" and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts required by Buyer. Seller shall furnish to Buyer a certificate (or any other similar proof of insurance) showing full compliance with the requirements set forth in this Section within ten (10) days of Buyer's written request.

14. **Audit; Plant Inspections.** Upon reasonable notice to Seller, either Buyer, Buyer's customers or their respective third-party designees may audit Seller's production facility, the Supplies and any other Seller property (including all pertinent documents, data and other information) related to the Purchase Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Purchase Order. Seller shall provide, without additional charge, all reasonable facilities and assistance.

15. **Intellectual Property.** Seller warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe any third-party's Intellectual Property Rights. Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Supplies.

16. **Confidential Information.** Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller (including the existence of this business relationship with Buyer) in connection with the Purchase Order and any and all Supplies, or services to be rendered and/or work to be performed pursuant to the Purchase Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use (except as necessary to the performance of the Purchase Order), communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Purchase Order.

17. **Social Responsibility and Protection of the Environment.** Seller shall comply with all laws and regulations regarding environmental protection.

18. **Compliance with Laws; Ethics.** Seller warrants that Seller, and all Supplies furnished by Seller under the Purchase Order shall comply with all applicable local, state, Federal and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time, including compliance with the United States Foreign Corrupt Practices Act (FCPA), the UK Bribery Act and similar international regulations (where applicable). In accordance with applicable "Conflict Minerals" laws, Buyer must determine whether its products contain tin, tantalum, tungsten or gold ("3TG") originating in the Democratic Republic of the Congo and adjoining countries ("Conflict Minerals"). To the extent Supplier supplies direct materials containing 3TG to Actuant under this Purchase Order, Supplier commits to have a supply chain process to ensure and document a reasonable inquiry into the country of origin of the 3TG minerals incorporated into products it supplies to Buyer. If requested, Supplier will promptly provide information or representations that Buyer reasonably believes are required to meet its conflict minerals compliance obligations.

19. **Buyer's Limited Liability to Seller.** Buyer's sole liability under the Purchase Order (including its termination, expiration or cancellation) is to pay for the Supplies in accordance with this Section. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS, OR LIABILITIES OF ANY KIND IN CONNECTION WITH THE PURCHASE ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.**

20. **Assignment.** Seller may not, without Buyer's prior written consent: (i) assign or delegate (including, without limitation, by subcontract) its obligations under the Purchase Order, or (ii) enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller.

21. **Relationship of the Parties.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order shall make either party the employee, agent or legal representative of the other for any purpose.

22. **Governing Law.** These Terms and any claim, dispute or controversy arising from or relating to Buyer's purchase and/or use of Products ("Dispute"), shall be governed by and construed in accordance with the laws of the domicile of Buyer (or Buyer's affiliate) as defined in the Purchase Order. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

23. **No Waiver.** Buyer's failure to insist on the performance by Seller of any term or failure to exercise any right or remedy reserved in the Purchase Order, or Buyer's waiver of any breach or default hereunder by Seller shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

24. **Severability.** If any provision of the Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

25. **Survival.** The obligations of Seller to Buyer survive termination of the Purchase Order, except as otherwise provided in the Purchase Order.

26. **Entire Agreement; Modifications.** The Purchase Order is the entire agreement between the parties respecting the Supplies and supersedes any prior agreements, negotiations or understandings of the parties respecting the Supplies, whether written or oral, except that a signed prior agreement (such as an award letter, statement of work, or non-disclosure agreement) will continue to apply to the extent not directly in conflict with the Purchase Order.