



Exova Canada Inc.
Purchasing Terms and Conditions

1 GENERAL

1. In these Conditions "Buyer" means Exova Canada Inc., a member of the Element Materials Technology Group; "Supplier" means the supplier indicated on the Order; "Goods" means the goods or other materials stated on the Order and any necessary ancillary goods or materials; "Services" means the services stated on the Order and any necessary ancillary services; "Company" means Exova Canada Inc and any of its affiliated companies (within the meaning of the *Business Corporations Act* (Ontario)); "Contract" means the contract (incorporating these Conditions) made between the Buyer and the Supplier for the sale and purchase of the Goods and/or the Services; "Order" means the Buyer's order for the Goods and/or the Services from the Supplier; "Supplier's Warranties" means those warranties as set out in clauses 5a and 5b.
2. These Conditions apply to the Contract and govern the Contract to the entire exclusion of all other terms or conditions (including any terms or conditions which the Supplier purports to apply under any brochure, price list, acknowledgement of order or similar document). Any variation to the Order or these Conditions shall have no effect unless expressly agreed in writing. These Conditions do not affect the Buyer's statutory and other legal rights.
3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 DELIVERY OF GOODS/PROVISION OF SERVICES

- a. The Supplier shall deliver the Goods or complete the provision of the Services by the delivery or completion date(s) stated on the Order. If no dates are so specified, delivery of the Goods and/or completion of the Services will be within 28 days of the date of the Order or by such later date as may be agreed by the Buyer and the Supplier in writing. Time for delivery of the Goods and/or completion of the Services shall be of the essence of the Contract.
- b. Delivery of the Goods and provision of the Services to the Buyer shall be made at the place(s) specified in the Order (or, if none specified, at the Buyer's premises from which the Order is despatched) and by the method(s) specified on the Order (or, if none specified, using such method as accords with best accepted industry practices).
- c. The Supplier shall deliver the quantity of goods stated on the Order. The Buyer may at its discretion accept a quantity variation and pay pro-rata for the actual quantity delivered.
- d. The Goods shall be properly packed and stored during transit so as to reach their destination in an undamaged condition. All containers and other packaging shall be included in the price and non-returnable unless otherwise stated on the Order.
- e. The Supplier shall at its own cost obtain and comply with any necessary export/import licences, permits or consents (including work permits or consents) for the supply and delivery of the Goods or provision of the Services.
- f. The Buyer or its representatives shall have the right to inspect and test the Goods and inspect the provision of the Services, and the Supplier irrevocably grants the Buyer the right to enter its premises for these purposes. If as a result of such inspection or testing the Buyer is not satisfied that the Goods or the Services comply with the Contract and the Buyer so informs the Supplier then the Supplier shall take all necessary steps to ensure compliance. No inspection or testing shall imply any acceptance by the Buyer.
- g. The Buyer may at any time make changes in writing relating to the Order including, without limitation, changes in the specification of the Goods or the method of performance of the Services, quantities, packing or time or place of delivery of the Goods or performance of the Services. If such changes result in an increasing cost of, or time required for, the delivery of the Goods and/or the performance of the Services, an equitable adjustment shall be made to the price and/or the schedule for the delivery of the Goods or the performance of the Services. Any claim for adjustment by the Supplier must be approved by the Buyer in writing before the Supplier proceeds with such changes.
- h. The Buyer shall be entitled to cancel the Order in whole or in part by giving notice to the Supplier at any time prior to delivery of the Goods or performance of the Services, in which event the Buyer's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation shall not include loss of anticipated profits or any consequential loss.

3 PRICE AND PAYMENT

- a. Unless otherwise stated on the Order the price for the Goods and/or the Services is exclusive of goods and services, sales, or excise tax, but inclusive of duties, fees or taxes, cost of delivery, carriage, packing or provision to the Buyer. Taxes will not be included on the Order but shall be included on the invoice. All / any additional charges to the Goods and/or the Services must be approved by the Buyer.
- b. If no price is stated on the Order, a price must be agreed in writing with the Buyer before the Order is acted upon by the Supplier.
- c. The Supplier's invoices shall not be paid by the Buyer unless they show the Order number and Supplier's tax registration number. Unless otherwise stated on the Order, payment shall be due from the Buyer sixty-five days from the invoice date. The Supplier may not invoice the Buyer until delivery of the Goods to the Buyer or completion of the Services unless otherwise stated on the Order.
- d. Payment by the Buyer shall be without prejudice to any claims or rights which the Buyer may have against the Supplier and shall not constitute any admission by the Buyer as to satisfaction of the Supplier's obligations under the Contract. The Buyer may withhold payment of any sums due under the Contract in the event of any dispute with or claim against the Supplier.
- e. The Buyer may, by notice in writing to the Supplier, set off any or all of the monies owing by the Buyer to the Supplier for the Goods or the Services against any amount owing from the Supplier to any Company (without prejudice to any other remedies of the Buyer in respect of any default by the Supplier).

4 RISK AND TITLE

- a. Risk in and title to the Goods shall pass to the Buyer on delivery to the Buyer (or, if appropriate, on receipt of the Goods by the Buyer's carriers) provided that where the Goods are transferred to the Buyer in connection with the Services, risk and title shall pass to the Buyer on substantial incorporation into or onto the premises or the property of the Buyer or on completion of the Services (whichever is earlier).
- b. Where the Buyer supplies to the Supplier materials and/or equipment on a free issue basis for use in the manufacture of the Goods for supply to the Buyer under the Contract, such materials and/or equipment shall at all times remain in the ownership of the Buyer but shall be at the Supplier's risk from point of receipt by the Supplier. The Supplier shall only use such materials and/or equipment for the purpose of manufacturing the Goods under the Contract, shall not subject such materials and/or equipment to any charge, lien or encumbrance and shall where reasonably practical keep such materials and/or equipment separate and clearly identified as the Buyer's property.
- c. Title to all items provided to the Supplier for or in connection with the provision of the Services shall remain at all times with the Buyer and the Supplier shall not exercise, assert or purport to exercise or assert any lien of whatever nature in connection with such items and risk in them shall remain with the Supplier until completion of the Services and redelivery to the Buyer (when risk shall revert to the Buyer).

5 WARRANTY AND LIABILITIES

- a. In the case of the Goods the Supplier warrants to the Buyer that:
 - i. the Goods as delivered shall comply with all specifications and/or drawings supplied by the Buyer to the Supplier or, if none, with the Supplier's standard specifications and with any description or sample;
 - ii. the Goods shall be of merchantable quality (within the meaning of the *Sale of Goods Act* (Ontario)), sound design, materials and workmanship and fit for any purpose held out by the Supplier or specified by the Buyer or as may be reasonably inferred from the Contract or dealings between the parties (the "Intended Purposes"), and the Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the trade all items or other materials of the Buyer (if any) provided to the Supplier for or in connection with the supply of the Goods; and
 - iii. the Goods shall comply with all applicable laws, standards and regulations (and with any collection, quantity or other requirements stated on the Order) concerning the manufacture, packaging, labelling, and delivery of the Goods and with best accepted industry standards.
- b. In the case of the Services the Supplier warrants to the Buyer that:
 - i. the Services shall, on completion of their provision to the Buyer, comply with the agreed specification or, if none, with the Supplier's standard specification and with any description or demonstration and shall otherwise be the best of their kind provided in the trade and be to the Buyer's reasonable satisfaction;
 - ii. the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade and the Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the trade all items or other materials of the Buyer (if any) provided to the Supplier for or in connection with the provision of the Services;
 - iii. the Services shall be provided in accordance with all applicable standards, regulations and/or legal requirements;
 - iv. in the case of the Services provided on or at premises of the Buyer, the Supplier shall comply with all the Buyer's site regulations in force from time to time;
 - v. the Supplier is in good standing under applicable laws governing workers' safety and insurance, or compensation, or maintains workers' compensation, and/or employees' liability insurance, with limits of not less than \$2,000,000 per occurrence; and
 - vi. the Supplier and its employees, directors, officers and representatives have not and shall not directly or indirectly offered/offer or paid/pay money or anything else of value to any government official, political party, or other person or entity in any manner that may constitute bribery or an illegal kickback, or that may otherwise violate the Foreign Corrupt Practices Act (United States), the Corruption of Foreign Public Officials Act (Canada), or other anti-bribery or anti-corruption laws which may apply to the Supplier or the Buyer.
- c. If the Buyer finds that the Goods and/or the Services (or any of them) fail to comply with any of the Supplier's Warranties (however slight the breach) the Buyer may, by giving notice to the Supplier:
 - i. reject any of the Goods or any part thereof (including any or all of the Goods not affected by such failure to comply), and/or require the immediate refund of any monies already paid and/or cancel the Order and for the avoidance of doubt, such right shall still be available to the Buyer even if the Buyer has re-sold or otherwise dealt with the Goods;
 - ii. refuse any further delivery of any Goods or the further provision of any Services (including under another Contract);
 - iii. require the Supplier (free of charge) to make good or replace the Goods or re-perform the Services to the Buyer's satisfaction (in either case within 30 days). Any demand to make good, repair, replace or re-perform shall not prevent the Buyer rejecting the Goods and/or the Services if the Supplier fails to comply or if the making good, repair or re-performance is unsatisfactory. Any replacement Goods or re-performed Services shall comply in all respects with the Supplier's Warranties; and/or
 - iv. (by itself or through arrangements with a third party) make good, modify repair or otherwise correct the Goods or re-perform the Services at the Supplier's cost. The Supplier shall immediately on demand reimburse the Buyer its costs and expenses of such making good, modification, repair, correction or re-performance.
- d. The Goods which are alleged not to comply with the Supplier's Warranties shall as far as practicable be preserved by the Buyer for inspection by the Supplier (provided that the Supplier inspects the Goods within 14 days of being notified of the alleged defect by the Buyer), and shall, if reasonably practicable, be returned to the Supplier at the Supplier's cost.
- e. The Supplier shall take out and maintain insurance with a reputable insurance company against any loss or damage whatsoever to the Buyer, the Buyer's employees, the Buyer's property, and any third party, whether caused by the Supplier's (or its sub-contractors') default in providing the Services or supplying the Goods or otherwise through the Supplier's (or its sub-contractors') negligence, in a minimum sum of \$2,000,000 for any one occurrence (or such other sum as may be specified on the Order). The Supplier shall provide evidence of such cover to the Buyer upon the Buyer's request.

6 FORCE MAJEURE

The Buyer has the right to defer the date of delivery or payment, cancel the Order, and/or otherwise vary the Contract if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control (including, without limitation, acts of God, war, fire, breakdown of plant or machinery, unavailability of fuel or power, flood, storm, tempest, explosion and national emergencies).

7 INTELLECTUAL PROPERTY; THIRD PARTY CLAIMS; SECRECY

- a. All designs, drawings, prints, samples and specifications prepared by the Buyer for the purposes of the Contract, and any such items prepared by the Supplier for the purposes of the Contract and representing, containing or embodying proprietary designs or other intellectual property of the Buyer, or prepared by the Supplier in accordance with the Buyer's commission or specification (collectively, the "Work Product"), and all intellectual property rights in and to the Work Product, shall remain or automatically upon creation thereof become the Buyer's property (as the case may be) and shall be returned to the Buyer upon completion or termination of the Contract. The Supplier undertakes, on request from the Buyer and at no cost to the Buyer, to execute or procure the execution of (as the case may be) such documentation, authorisation, waivers or declarations as may be reasonably required to vest full right, title and interests in the Work Product in the Buyer, and to waive all moral rights held by any authors of the Work Product.
- b. The Supplier shall not use or allow to be used in any manner not approved by the Buyer, the Work Product, or any trademarks or trade names required by the Buyer to be applied or used by the Supplier in relation to the Goods or the Services.
- c. The Supplier shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any intellectual property rights of the Buyer and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect.
- d. The Supplier shall not (and shall procure that its officers, agents and employees shall not) during or after the Contract disclose or allow to be disclosed to any person any confidential information relating to the business, affairs or property of the Buyer or any of the Goods or the Services or any such information referred to in clause 7a (collectively, the "Confidential Information"), or any information from Buyer about an identifiable person ("Personal Information") without the Buyer's prior written consent. The Supplier shall only use the Confidential Information and Personal Information (collectively, the "Protected Information") as necessary to provide Goods and/or Services to the Buyer under the Contract. Except as expressly permitted by the Buyer in writing, the Supplier shall not: (i) disclose any Protected Information to any third party, or (ii) duplicate, transfer, sell, publish, transmit, modify, reverse-engineer or take any benefit from any Protected Information, or (iii) directly or indirectly assist, facilitate or encourage any third party to carry on any activity that the Supplier is not permitted to carry on, relating to the Contract. If the Supplier is required to disclose Protected Information by law or court order, the Supplier shall provide Buyer with sufficient advance notice to enable Buyer the opportunity to contest the disclosure or obtain a protective order and the Supplier shall strictly limit such disclosure to the Protected Information which the Supplier is advised, in writing, by legal counsel as being legally required to be disclosed. The Supplier shall also use and take all reasonable security measures to protect the Protected Information from loss, theft and unauthorized use, access, disclosure, duplication, modification and deletion. The Supplier shall promptly notify Buyer in writing of any breach or suspected breach of security or confidentiality involving any Protected Information, and shall use reasonable efforts to limit or reverse any damage caused by that breach. As between Buyer and Supplier, the Buyer exclusively owns: (a) all Protected Information, (b) all copies, notes and recordings of any Protected Information made by or for the Supplier, and (c) all proprietary rights or interests in or associated with the Protected Information. Promptly upon the Buyer's request the Supplier shall deliver to the Buyer all documents and other material in the Supplier's possession or control which belong to the Buyer or which contain, reveal or embody any Protected Information, and the Supplier shall destroy all remaining copies in its possession or control.

8 INDEMNITY

- a. The Supplier shall indemnify the Buyer against any direct, indirect or consequential losses, damages, proceedings, liabilities, claims, costs and expenses (including legal expenses on a full indemnity basis) which may be suffered or incurred by the Buyer as a result of or arising out of or in connection with:
 - i. any Goods and/or Services failing to comply with any of the Supplier's Warranties;
 - ii. any Goods and/or Services being defective or failing to comply with any applicable laws or regulations;
 - iii. any late or incomplete delivery of the Goods or performance of the Services by the Supplier;
 - iv. any other breach of the Contract by the Supplier or any negligent act of the Supplier, its employees, agents or contractors (whether or not causing or contributing to death and/or personal injury);
 - v. any claim made against the Buyer in respect of any liability, loss, damage, cost or expense sustained by the Buyer's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods and/or the Services; or
 - vi. any actual or alleged infringement or violation by the Supplier, the Goods and/or the Work Product and/or the Services, or the use or exploitation of the Goods and/or the Work Product and/or the Services in connection with the Intended Purposes, of the rights of a third party or the Buyer under any patent, registered design, copyright, design right, trade mark, service mark or trade-name or other intellectual property rights.

9 TERMINATION AND SUSPENSION

- a. The Buyer may terminate the Contract forthwith or suspend the whole or any outstanding part of the Order by written notice to the Supplier if:
 - i. the Supplier fails to deliver or despatch the Goods or commence or complete the Services on the date or within the period (as the case may be) required under clause 2a or breaches any other term of the Contract;
 - ii. the Supplier is unable to pay its debts as they fall due, ceases (or threatens to cease) to carry on its business, enters into any arrangement or composition with its creditors, commits any act of bankruptcy or an order is made or an effective resolution is passed for its winding up, or if a petition regarding any of the foregoing is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed for the Supplier, or the Supplier suffers any foreign equivalent of the foregoing; or
 - iii. the Buyer has reasonable grounds for suspecting that an event in Clause 9a.ii has occurred or will occur, or that the Supplier will not deliver the Goods or provide the Services in accordance with the Contract.
- b. The Buyer reserves the right in the circumstances stated in Clause 9a to remove from the premises where they are being made any the Goods in course of preparation for the Contract and to have the same completed elsewhere or to remove from the premises where they are being processed or otherwise dealt with in connection with the Services any materials provided to or on behalf of the Supplier in connection with the Services. The Buyer shall be entitled to charge the Supplier the costs

incurred by the Buyer in having the Goods and/or the Services completed by others but shall credit to the Supplier a fair proportion of the price for any Services provided, the Goods or materials so removed or work in progress taken over by the Buyer.

10. MODERN SLAVERY

- a. In performing its obligations under the Contract, the Supplier shall, and shall ensure that each of its subcontractors shall, comply with all applicable laws, statutes, regulations and codes relating to the prevention of slavery and human trafficking.
- b. The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- c. The Supplier shall notify the Buyer as soon as it becomes aware of any actual or suspected slavery or human trafficking in its supply chains.

11. MISCELLANEOUS

- a. The Contract may not be assigned by the Supplier, and the Supplier may not sub-contract manufacture of the Goods or provision of the Services, without the Buyer's prior written consent.
 - b. Any provision of these Conditions which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these Conditions and the remainder of such provision shall not be affected.
 - c. Notices must be in writing, in English, to the Buyer's or the Supplier's address and may be delivered by hand, first class post, facsimile or by electronic mail. If delivered by hand, the notice shall be deemed delivered on the first working day after day of delivery. If delivered by post, the notice will be deemed delivered on the third working day after being placed prepaid in the first class post. If delivered by facsimile or electronic mail, the notice will be deemed delivered at the time of transmission.
 - d. No failure by the Buyer to enforce any provision of the Contract shall be construed as a release of its rights relating thereto or to sanction any further breach. No remedy for the Buyer conferred by any of the provisions of the contract is intended to be exclusive of any other remedy, and every remedy will be cumulative and in addition to every other remedy.
 - e. The provisions of these Conditions which expressly or impliedly have effect after termination of the Contract shall continue to be enforceable notwithstanding termination (including, without limitation, clauses 7, 8 and 9b).
 - f. The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the by any person not a party to it.
 - g. The Contract shall be governed by and construed in accordance with the law of Ontario, Canada, without regard to its conflict of laws principles, or the United Nations Convention for the International Sale of Goods, and the Buyer and Seller submit to and agree the Ontario courts shall have exclusive jurisdiction.
 - h. A facsimile or Portable Document Format (PDF) copy of a signature to the Order and/or the Contract shall be deemed to have the same force and effect as an original signature.
- 11. QUEBEC LANGUAGE LAWS**
The parties hereto have agreed that this Contract, all other documents referred to in this Contract and any Order issued thereunder be drafted in English. Les Parties aux présentes ont convenu de rédiger ce Contrat ainsi que tout document s'y référant et tout bon de commande émis en vertu de ce Contrat, en anglais.