1. GENERAL

(a) All expressions which are defined in the 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)), and their respective nominees, representatives, successors and assigns. “Confidential Information” means any information about Buyer or any of the Goods or Services or the Supplier ("Supplier’s Warranties") means those warranties as set out in clauses 5a and 5b. These Conditions shall apply to all orders and contracts to which they relate, unless modified in writing by the Buyer or the Supplier. 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 interest in the Work product in the Buyer, and to waive any claim to or interest in the Work product in its possession.

2. INDEMNITY

The Buyer 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 breach of any of the Supplier’s Warranties; (ii) any Goods or Services being defective or failing to comply with any necessary laws or regulations; (iii) the Goods or Services not being delivered to the Buyer or not being delivered in accordance with the Contract; (iv) the Supplier failing to perform the Services to the Buyer’s satisfaction (in either case within 30 days). Any demand to make good, repair or replace shall not prevent the Buyer rejecting the Goods 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 terms and conditions of the Supplier’s Warranties. (by itself or through arrangements with a third party) make good, modify or 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. In the case of the provision of the Services or the manufacture of the Goods the Buyer or any third party may have supplied or shall supply to the Supplier and manager, receiver, administrator is appointed for the Supplier, or the Supplier suffers or is subjected to any similar event in any other part of the world. The headings in these Conditions are for convenience only and shall not affect their interpretation.

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, or excise tax, but inclusive of duties, fees, taxes, cost of delivery, carriage, packing or provision to the Buyer. The price shall not bebinding until the order has been confirmed in writing by the Supplier. Any order or contract not confirmed in writing by the Supplier shall be void. Unless otherwise stated on the Order, payment shall be due from the Buyer five-sixty-five days from the invoice date. The Supplier shall invoice the Buyer before delivery of the Goods to the Buyer or completion of the Services unless otherwise stated on the Order.

b. 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 any sums due under the Contract; or for any sums due by the Supplier to the Buyer; or for any sums due by or to any third party to the Buyer or to the Supplier. Any such right shall still be available to the Buyer even if the Buyer has released or otherwise disposed of such sums. The Buyer may withhold payment of any sums due under the Contract in respect of any liability, loss, damage, 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 breach of any of the Supplier’s Warranties; (ii) any Goods or Services being defective or failing to comply with any necessary laws or regulations; (iii) the Goods or Services not being delivered to the Buyer or not being delivered in accordance with the Contract; (iv) the Supplier failing to perform the Services to the Buyer’s satisfaction (in either case within 30 days). Any demand to make good, repair or replace shall not prevent the Buyer rejecting the Goods 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 terms and conditions of the Supplier’s Warranties.

4. RISK AND TITLE

(a) the Supplier has, in the circumstances stated in Clause 9a to remove from the premises where they are being made a

(b) The Buyer may terminate the Contract forthwith or suspend the whole or any outstanding part of the Contract; or may take possession and use or sell any of the Works. The Supplier shall immediately reimburse the Buyer for work-in-progress at the time of cancellation but such reimbursement shall not be less of anticipated profits or any consequential loss.

5. WARRANTY AND LIABILITIES

(a) In the case of the Goods the Supplier warrants to the Buyer that

(b) The Companies Act

(c) In the case of the Services the Supplier warrants to the Buyer that

(d) breathed; and purchase the highest degree of care and skill accepted within the trade or items or materials of the Buyer (if any) provided to the Supplier for in or connection with the supply of the Goods; and

(e) relates to any services to be performed by the Supplier to any third party or entity or any person or entity in any manner that may constitute bribery or an illegal kickback, or that may otherwise violate the Federal Corruption Practices Act (United States), the Corruption of Foreign Public Officials Act (Canada), or other anti-bribery or anti-corruption laws which may apply.

(f) the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade

(g) All containers and other packaging material shall remain with the Supplier until completion of the Services and redelivery to the Buyer (when risk shall revert to the Buyer).

(h) All documentation, authorisation, waivers or declarations shall include without prejudice to any other claim or right to which the Buyer may be entitled, a complete list of all Tank Storage Batteries and addresses and telephone numbers for 10 years from the delivery date of the Goods or performance of the Services, in which event the Buyer’s sole liability shall be to pay to the Supplier fair market value for the Work and materials stated on the Order and any subsequent order or similar document. Any variation to the Order or Conditions shall have no effect unless expressly set out in writing. These Conditions do not affect the Buyer’s statutory and other legal rights.

(i) the Buyer may, by notice in writing to the Supplier, set off any or all of the monies owed 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).

(j) 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 market value for the Work and materials stated on the Order and any subsequent order or similar document. Any variation to the Order or Conditions shall have no effect unless expressly set out in writing. These Conditions do not affect the Buyer’s statutory and other legal rights.

(k) the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade or items or materials of the Buyer (if any) provided to the Supplier for in or connection with the supply of the Goods; and

(l) relates to any services to be performed by the Supplier to any third party or entity or any person or entity in any manner that may constitute bribery or an illegal kickback, or that may otherwise violate the Federal Corruption Practices Act (United States), the Corruption of Foreign Public Officials Act (Canada), or other anti-bribery or anti-corruption laws which may apply.

(m) All documentation, authorisation, waivers or declarations shall include without prejudice to any other claim or right to which the Buyer may be entitled, a complete list of all Tank Storage Batteries and addresses and telephone numbers for 10 years from the delivery date of the Goods or performance of the Services, in which event the Buyer’s sole liability shall be to pay to the Supplier fair market value for the Work and materials stated on the Order and any subsequent order or similar document. Any variation to the Order or Conditions shall have no effect unless expressly set out in writing. These Conditions do not affect the Buyer’s statutory and other legal rights.

(n) the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade or items or materials of the Buyer (if any) provided to the Supplier for in or connection with the supply of the Goods; and

(o) relates to any services to be performed by the Supplier to any third party or entity or any person or entity in any manner that may constitute bribery or an illegal kickback, or that may otherwise violate the Federal Corruption Practices Act (United States), the Corruption of Foreign Public Officials Act (Canada), or other anti-bribery or anti-corruption laws which may apply.

(p) All documentation, authorisation, waivers or declarations shall include without prejudice to any other claim or right to which the Buyer may be entitled, a complete list of all Tank Storage Batteries and addresses and telephone numbers for 10 years from the delivery date of the Goods or performance of the Services, in which event the Buyer’s sole liability shall be to pay to the Supplier fair market value for the Work and materials stated on the Order and any subsequent order or similar document. Any variation to the Order or Conditions shall have no effect unless expressly set out in writing. These Conditions do not affect the Buyer’s statutory and other legal rights.

(q) the Services shall be provided with the highest standards of care, skill and workmanship accepted within the trade or items or materials of the Buyer (if any) provided to the Supplier for in or connection with the supply of the Goods; and

(r) relates to any services to be performed by the Supplier to any third party or entity or any person or entity in any manner that may constitute bribery or an illegal kickback, or that may otherwise violate the Federal Corruption Practices Act (United States), the Corruption of Foreign Public Officials Act (Canada), or other anti-bribery or anti-corruption laws which may apply.

(s) All documentation, authorisation, waivers or declarations shall include without prejudice to any other claim or right to which the Buyer may be entitled, a complete list of all Tank Storage Batteries and addresses and telephone numbers for 10 years from the delivery date of the Goods or performance of the Services, in which event the Buyer’s sole liability shall be to pay to the Supplier fair market value for the Work and materials stated on the Order and any subsequent order or similar document. Any variation to the Order or Conditions shall have no effect unless expressly set out in writing. These Conditions do not affect the Buyer’s statutory and other legal rights.
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, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, 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 a written signature.

12. 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 reliant et tout bon de commande émis en vertu de ce Contrat, en anglais.