



Exova, Inc.

Purchasing Terms and Conditions ("Conditions")

1 GENERAL

- a. In these Conditions, "Buyer" means Exova 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 Inc. and any of its subsidiary companies; "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; and "Supplier's Warranties" means those warranties as set out in Sections 5a and 5b.
- b. These Conditions apply to the Contract and/or Orders and govern the Contract and/or Orders 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 Contract or an Order or these Conditions shall have no effect unless expressly agreed in writing by Buyer and specifically confirming over-riding provisions in these Conditions. These Conditions do not affect the Buyer's statutory and other legal rights.
- c. 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 respective delivery or completion dates 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 and/or Order.
- b. Delivery of the Goods and provision of the Services to the Buyer shall be made at the respective places specified in the Order (or, if none is specified, at the Buyer's premises from which the Order is placed) and by the methods specified on the Order (or, if none is specified, using such methods as comply 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 at Supplier's expense, 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 and expense, obtain, maintain and comply with any necessary export/import licenses, permits or consents (including work permits or authorizations) 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 or Order 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 nor the waiver of any contractual or statutory rights.
- 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 increased 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 and shall not exceed the price to be paid for the Goods to be delivered and/or Services to be performed under the cancelled Order.

3 PRICE AND PAYMENT

- a. Unless otherwise stated on the Order the price for the Goods and/or the Services shall be denominated in US Dollars and is exclusive of duties, fees, sales or use taxes, or cost of delivery, carriage, packing or provision to the Buyer. Such charges must be identified separately from the price. Taxes will not be included on the Order but shall be included on the invoice. All/any additional charges for the Goods and/or the Services must be approved by the Buyer in advance and in writing.
- 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. 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 including, without limitation, the Supplier's satisfaction of its obligations under the Contract or Order. The Buyer may withhold payment of any sums due under the Contract or Order 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 the Buyer or its affiliates (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, without any charge to the Supplier, provides materials and/or equipment to the Supplier for use in the manufacture of the Goods to be delivered to the Buyer under the Contract or Order, such materials and/or equipment shall at all times remain owned by 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 or Order, 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. The Supplier shall promptly execute or authorize appropriate UCC Financing Statements to be filed to evidence Buyer's title to said materials and/or equipment and the Supplier shall promptly obtain and deliver to the Buyer lien waivers from its landlord (if its premises are leased) and from any secured lenders of the Supplier, to confirm the Buyer's superior title and lien rights. The Supplier shall also insure, at the Supplier's cost and expense, said materials and/or equipment against casualty or loss at the Buyer's request.
- 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 free from defects in workmanship, design, materials or functionality, shall be of first-class quality, sound design, merchantable, and fit for any purpose intended by the Supplier or specified by the Buyer or as may be reasonably inferred from the Contract, Order or dealings between the parties, and the Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the industry and 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 federal, state and local laws, rules and regulations (and with any collection, quantity or other requirements stated in the Contract or on the Order) concerning the manufacture, packaging, labelling, and delivery of the Goods, and with all applicable federal, state and local health, safety and environmental laws, rules and regulations, 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 industry, and be to the Buyer's reasonable satisfaction;
 - ii. the Services shall be provided with the highest standards of care, skill and workmanship and the Supplier shall hold as bailee and treat with the highest degree of care and skill accepted within the trade and industry 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 federal, state and local laws, rules and regulations (including, without limitation, the Foreign Corrupt Practices Act of 1977), and with all best accepted industry practices;
 - iv. in the case of the Services provided on or at the premises of the Buyer, the Supplier shall comply with all the Buyer's site regulations in force from time to time and with other reasonable requests of the Buyer; and
 - v. the Supplier and all workers under its supervision and/or control are covered by liability insurance of no less than US \$2,000,000 and that the Supplier is in compliance with all applicable Workers Compensation laws and Supplier shall provide evidence of such compliance to Buyer, upon request. All such insurance shall be maintained by Supplier for the term of the Contract or Order and for a period of 3 years following termination or completion thereof.
- 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 (regardless of the type or scale of the breach) the Buyer may, by giving notice to the Supplier:
 - i. reject all or any part of the Goods (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 Contract or 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 from 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;
 - 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; provided however, the Supplier shall immediately on demand reimburse the Buyer its costs and expenses of such making good, modification, repair, correction, or re-performance; and/or
 - v. exercise any other right or remedy provided in these Conditions, the Contract or Order or by law.
- 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 US \$2,000,000 for any one occurrence (or such other sum as may be specified in the Contract or Order). The Supplier shall provide evidence of such cover to the Buyer upon the Buyer's request. All such insurance shall be maintained by Supplier for the term of the Contract or Order and for a period of 3 years following termination or completion thereof.

6. FORCE MAJEURE

The Buyer has the right to defer the date of delivery or payment, cancel the Contract and/or Order, and/or otherwise vary the Contract and/or Order 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 or Order, and any such items prepared by the Supplier for the purposes of the Contract or Order 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 or Order. 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, authorization, waivers or declarations as may be reasonably required to vest full right, title, and interests in the Work Product and all of their associated intellectual property rights 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, 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 authorize 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 authorize any third party to omit to do any act which, by its omission, would have that effect.
- d. The Supplier shall not (and shall require that its officers, agents and employees shall not) during or after the Contract or Order is completed, 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 Section 7a (collectively, "Confidential Information"), or any information or data that can be used to identify or locate a person or entity or the activity, assets or personal information of a person or entity, including any information or data that is protected by applicable privacy laws (collectively, "Personal Data") without the Buyer's prior written consent. The Supplier shall only use the Confidential Information and Personal Data (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 except for one copy retained by Supplier for archival and compliance purposes such as licensing, legal, and governmental regulatory requirements provided that such retained copy is protected pursuant to the provisions of these Conditions for so long as it is retained even if these Conditions, the Contract or Order have terminated.

8. INDEMNITY

The Supplier hereby indemnifies and agrees to hold the Buyer harmless from and 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, or its affiliates, 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 federal, state or local laws, rules 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 or Order 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, any customer or a 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, misappropriation or violation by the Supplier, including arising from or in connection with the Goods, the Services and/or the Work Product, of the rights of a third party or the Buyer under any patent, registered design, copyright, design right, trademark, service mark, or trade-name or other intellectual property rights.

9. TERMINATION AND SUSPENSION

- a. The Buyer may, in addition to its other rights and remedies, terminate the Contract or Order immediately, or suspend the whole or any outstanding part of the Contract or Order, by written notice to the Supplier if:
 - i. the Supplier fails to deliver or provide the Goods or commence or complete the Services on the date or within the period (as the case may be) required under Section 2a or breaches any other term of the Contract or Order;
 - ii. the Supplier is unable to pay its debts as they come due, ceases (or threatens to cease) to carry on its business, enters into any arrangement or composition with its creditors, or 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 a 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 Section 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 or Order and Supplier fails to provide timely adequate assurances of performance as otherwise provided by law.
- b. The Buyer reserves the right in the circumstances stated in Section 9a to remove from the premises where they are being made any the Goods in process for the Contract or Order 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. PROHIBITION OF MODERN SLAVERY

- a. In performing its obligations under the Contract or Order, 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 or Order may not be assigned by the Supplier and the Supplier may not subcontract 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 postage, facsimile, or electronic mail. If delivered by hand, the notice shall be deemed delivered on the first working day after day of delivery. If delivered by posting, the notice will be deemed delivered on the third working day after being placed prepaid with the U.S. Postal Service. If delivered by facsimile or electronic mail, the notice will be deemed delivered at the time of transmission if within regular business hours or if outside a regular business hours the next following regular business day, provided there is confirmed transmission of the facsimile or electronic mail.
- d. No failure by the Buyer to enforce any provision of the Contract or Order shall be construed as a release of its rights under or to enforce such provision or to sanction any further breach by the Supplier. No remedy for the Buyer conferred by any of the provisions of the Contract or Order 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 or completion of the Contract or Order shall continue to be enforceable notwithstanding termination (including, without limitation, Sections 5, 7, 8, 9b, and 11).
- f. The parties to the Contract or Order do not intend that any of its terms will be enforceable by any person not a party to such Contract or Order.
- g. The Contract or Order shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the State of Delaware's conflicts of laws principles.
- h. The prevailing party shall be entitled to recover its reasonable legal expenses and attorneys' fees from the non-prevailing party in any proceeding instituted to enforce or interpret any provision of the Contract, Order or these Conditions.