

**Abednego Environmental Services, LLC (“Abednego”)**

**Production Materials Purchase Order General Terms and Conditions**

Index

	Page
1.0 Agreement	1
2.0 Acceptance	1
3.0 Delivery	1
4.0 Packing, Marking and Shipment	2
5.0 Release Authorization	3
6.0 Inspection and Rejections	3
7.0 Payments	4
8.0 Silicone Free	4
9.0 Labor Disputes	4
10.0 General Warranty	5
11.0 Price Warranty	5
12.0 Insurance	5
13.0 Indemnification	6
14.0 Changes	6
15.0 Claims Adjustment	7
16.0 Customs	7
17.0 Use of Abednego’s Name	8
18.0 Information Disclosed	8
19.0 Confidentiality	9
20.0 Intellectual Property	9
21.0 Assignment	10
22.0 Termination at Abednego’s Option	10
23.0 Cancellation for Default	11
24.0 Taxes	11
25.0 Remedies	12
26.0 Required Compliance	12
27.0 Governing Law and Venue	12
28.0 Independent Contractors	13
29.0 Force Majure	13
30.0 Supplier Diversity	14

# **Abednego Environmental Services, LLC (“Abednego”)**

## **Production Materials Purchase Order General Terms and Conditions**

### **1.0 Agreement**

Abednego’s purchase order is an offer by Abednego Environmental Services, LLC (“Abednego”) to the party to whom the purchase order is addressed (“Seller”) to enter into the agreement it describes including, without limitation, to purchase the goods and/or services identified herein.

By accepting Abednego’s purchase order, Seller agrees to sell and deliver the goods or services specified in Abednego’s purchase order in accordance with these Terms and Conditions contained herein, and any documents incorporated herein, Seller’s bid documents, drawings (to the extent approved by Abednego) and specifications (to the extent approved by Abednego), all of which constitute the entire and final agreement of the parties and cancels and supersedes any prior negotiation or agreements. Seller acknowledges receipt of all listed documents or expressly assumes the obligation to obtain and review all such documents.

Abednego’s purchase order expressly limits acceptance to the terms and conditions contained herein. Any additional or different terms, whether contained in Seller’s forms or otherwise presented by Seller are rejected unless expressly agreed to by Abednego and so noted herein.

Abednego objects to any additional or inconsistent terms in an Offer, acceptance, or other communication from Seller and only the Terms and any other terms set out in an Order shall be binding upon the parties. No objection to the Terms or reservation of rights by Seller shall be effective. TERMS AND CONDITIONS IN AN ATTEMPTED ACKNOWLEDGMENT OF AN ORDER, OFFER OR OTHER SELLER DOCUMENT INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF AN ORDER ARE NOT BINDING UPON Abednego UNLESS SPECIFICALLY ACCEPTED BY Abednego IN WRITING, AND Abednego HEREBY OBJECTS THERETO. No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Abednego’s rights.

Abednego’s purchase orders may be transmitted to Seller via electronic data interchange or delivered to Seller in a paper format.

### **2.0 Acceptance**

Abednego’s purchase order constitutes Abednego’s offer to Seller and is not binding on Abednego until accepted by Seller. Seller may accept by signing the purchase order or by commencing work hereunder.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

#### **3.0 Delivery**

Time is of the essence with respect to all delivery schedules Abednego provides hereunder. Delivery must be effected within the time specified in the purchase order, or in accordance with Abednego releases or procedures, if so indicated herein. Abednego may from time to time change delivery schedules or direct temporary suspension of the scheduled shipments.

If at any time Seller has reason to believe that deliveries will not be made as scheduled in the purchase order or releases, Seller will immediately notify Abednego by written notice setting forth the cause and length of the anticipated delay. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by Abednego including, but not limited to, any premium transportation or other costs required to meet the specified delivery schedule will be at the expense of Seller.

#### **4.0 Packing, Marking and Shipment**

Seller will pack and mark goods and make shipments (including shipping on Saturdays and holidays, when requested) in accordance with sound commercial practices and with Abednego’s instructions, meet carrier requirements and assure delivery free of damage and deterioration. All shipments of goods to Abednego must include two packing slips, or four packing slips in the case of shipments directed to a consolidation point. Whenever shipment is made by truck, Seller will enclose one of the packing slips (or packing slip sets in the case of multiple items shipments) in an envelope and Seller will record written instructions on the bill of lading directing the delivering driver to deliver the envelope to Abednego’s traffic representative upon arrival at Abednego’s plant. Seller is responsible for the goods until they have been delivered and fully unloaded to the extent required at the designated FOB point.

Abednego may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipments of the goods from the FOB point accordingly. Seller will comply with all of Abednego’s transportation routing instructions, including, but not limited to, mode of transportation, utilization of assigned carrier and identification of the shipping point. Seller will be responsible for all excess costs incurred because of its failure to comply with Abednego’s transportation instructions.

Abednego will not be responsible for delays in the payment of invoices if the following requirements are not met: invoices and packing slips must bear the supplier identification, purchase order number, part number, the requisition number on quantity buys or the release number on blanket orders, the “ship-to” address, whether containers used are “returnable” or “non-returnable” and any other required shipping specifications.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

Unless specifically included, no charge to Abednego will be made for drums, containers, crating, dunnage, pallets, customs duties or storage. Seller will be liable for all damage to the materials resulting from improper packing, and expenses of Abednego including expedited replacement costs as a result of such damage shall be payable by Seller on demand. Abednego may deduct such expenses from the amount due Seller.

If the materials covered hereunder are manufactured in a country other than the country in which the goods are delivered to Abednego, Seller will provide an appropriate Certificate of Origin and mark the goods “Made in (country of origin)”.

#### **5.0 Release Authorization**

When deliveries are specified to be in accordance with Abednego’s written releases, Seller will deliver those goods authorized by such written releases at the times and in the quantities specified therein. Abednego will not be required to pay for any goods that exceed the quantities specified in its releases and delivery schedules or to accept goods that are delivered in advance of the delivery date specified therein. Seller bears the risk of loss of all goods delivered in advance of the delivery date specified in Abednego’s release and delivery schedules.

Seller acknowledges that any estimates, forecasts or projections of future anticipated volume or quantity requirements for goods or services provided by Abednego are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Abednego makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such estimates, forecasts or projections provided to Seller, including with respect to the accuracy or completeness of any such estimates, forecasts or projections.

#### **6.0 Inspection and Rejections**

Abednego may inspect and evaluate all goods (including all tooling and material used in their manufacture) to be provided, and all services to be performed, hereunder at times and places designated by Abednego. Seller will provide, maintain and at all times utilize a Quality Assurance system approved by Abednego and which meets Abednego specifications. Notwithstanding payment or any prior inspection, Abednego may revoke acceptance, reject or require correction and return to the Seller (at Seller’s expense and risk of loss) any goods delivered or services rendered that do not conform to applicable requirements. Each purchase order is issued for the item or service specifically identified and any substitution, without prior Abednego approval, will be considered a breach of this agreement. Without limiting its remedies, after notice

**Abednego Environmental Services, LLC (“Abednego”)**

**Production Materials Purchase Order General Terms and Conditions**

to Seller, Abednego may (i) replace or correct any non-conforming goods or services and charge Seller the cost of such replacement or correction, (ii) cancel the order for default under Paragraph 23 hereof, (iii) subject Seller’s account to a debit for the damages suffered by Abednego; (iv) cause the removal of Seller as an approved supplier; (v) return goods to Seller (at Seller’s sole cost and expense) for replacement at no additional charge to Abednego and (vi) pursue any and all other remedies available to Abednego under law or equity.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

#### **7.0 Payments**

Unless otherwise noted in the purchase order, payments will be made net 15<sup>th</sup> proximo and net 30<sup>th</sup> proximo following receipt of proper invoice (i.e., invoices submitted by the 15<sup>th</sup> day of any month will be paid by the 15<sup>th</sup> day of the following month and invoices submitted after the 15<sup>th</sup> day of any month will be paid by the 30<sup>th</sup> day of the following month).

#### **8.0 Silicone Free**

All items purchased or supplied hereunder are to be manufactured and assembled without the use of silicone. This includes but is not limited to all equipment, components, assemblies of components, gaskets, diaphragms, seals, lubricants, sealants, cleaning compounds, chemicals and prime or finish paints.

If the products or items provided hereunder cannot be provided meeting the requirement of 100% silicone free, then Seller is required to notify Abednego’s Purchasing Department immediately prior to providing any silicone contaminated product. Abednego will provide Seller with an accepted course of action to remedy the situation. The Seller is not to provide any product or item containing silicone without written permission from Abednego’s Purchasing Department.

Notwithstanding anything else contained herein, the Seller recognizes that a breach of this Paragraph 8 could or might cause significant direct, consequential, indirect or special damages to Abednego and its customers. Therefore, notwithstanding anything else contained herein, the Seller agrees that it will be responsible for any such direct, consequential, indirect or special damages, special consequential or indirect damages caused in whole or in part by breach of this section and without regard to any other limitation of damages provision.

Abednego reserves the right to cancel any purchase order without penalty, if products or items purchased cannot be provided 100% silicone free.

#### **9.0 Labor Disputes**

Seller will notify Abednego immediately of any actual or potential labor dispute delaying or threatening to delay timely performance hereunder, and will convey all relevant information to Abednego. Seller will notify Abednego in writing six (6) months in advance of the expiration of any current labor contract. Prior to the expiration of any labor contract of Seller, Seller will establish, subject to the approval of Abednego and at Seller’s expense, a plan to continue to provide goods or services without interruption.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

#### **10.0 General Warranty**

Seller warrants that the goods or services will (i) comply with all specifications, drawings, descriptions or samples furnished and/or specified by Abednego, (ii) comply with all U.S. industry standards, and all laws, regulations and other governmental requirements (including, but not limited to, those of the United States Environmental Protection Agency, the United States National Highway Traffic Safety Administration, and the Commission of the European Union) in force in countries where goods or products equipped with such goods or services are to be installed or sold; (iii) be merchantable, and (iv) be free from defects in material and workmanship. Seller further warrants that all goods not designed by Abednego will be fit and sufficient for the purpose intended. Seller shall repair any defects during the applicable warranty period at Seller's cost and expense (including, without limitation, for all parts, labor and transportation costs) immediately after being notified of any such defect or defects by Abednego. Abednego may deduct from Seller's invoice the cost of any repair work resulting from Seller's performance of the services or goods. Seller's liability for a breach of the warranties given herein will be determined by Abednego based on an analysis or test (or set of analyses or tests) performed on a sample of parts or material as Abednego determines appropriate. Seller will participate in such analysis in accordance with Abednego's procedures.

Seller further warrants that on delivery Abednego will receive good title to the goods and services, free and clear of all liens and encumbrances and that all goods and services will be free from any actual or claimed patent, copyright or trademark infringement.

These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Abednego.

#### **11.0 Price Warranty**

Seller warrants that the prices for the articles sold to Abednego hereunder are no less favorable than Seller currently extends to any other customers for the same or similar goods or services in similar quantities. If Seller reduces its prices to others for the same or similar goods or services during the term of this order, Seller will reduce the prices to Abednego for such goods or services correspondingly. Seller warrants that prices shown on this order are complete, and that no additional charges of any type will be added without Abednego's express written consent.

#### **12.0 Insurance**

Seller will provide worker's compensation, comprehensive general liability, automobile, public liability, and property damage insurance in amounts and

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

coverage sufficient to cover all claims hereunder and as required by applicable law (including, without limitation, full public and employee liability, property damage, and workmen’s compensation coverage). Such policies will name Abednego as an additional insured thereunder and shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for Abednego. Abednego may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligation under this clause. Seller’s certificates of insurance related to the foregoing insurance policies shall provide at least sixty (60) days’ prior written notice to Abednego of cancellation or material alteration.

If the Seller fails to procure and maintain such insurance, Abednego shall have the right to procure and maintain the said insurance for, and in the name of, the Seller and the Seller shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance.

#### **13.0 Indemnification**

To the fullest extent allowed by law, Seller will defend, indemnify, and hold Abednego harmless against all claims, liabilities, losses, damages, and settlement expenses, including but not limited to attorney’s fees and interest, in connection with (a) Seller’s actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, industrial design right, or other proprietary right, by reason of the manufacture, use or sale of the goods or provision of the services, except for infringement arising out of compliance with specifications furnished by Abednego; (b) any defect or alleged defect in any goods or services provided by Seller hereunder; (c) any noncompliance or alleged noncompliance by Seller of its representations, warranties, or obligations hereunder; or (d) for injury or death of any person or damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees, agents, or subcontractors in connection with its performance hereunder, either on Abednego’s property or in the course of their employment in each case unless such claims have been specifically determined by the trier of fact to be the result of the sole negligence of Abednego.

#### **14.0 Changes**

Abednego may, at any time, make changes in drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment requirements prescribed herein. To the extent that such change leads to a claim by Seller for a price adjustment, such claim must be provided to Abednego in writing within ten (10) days from date of receipt by Seller of Abednego’s

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

notification of any change or shall be deemed waived. Abednego will have sole discretion as to whether to allow a price adjustment and/or to verify all claims hereunder by auditing relevant records, facilities, work or materials of Seller. Seller agrees to proceed with the order as changed under this clause without regard to any pending or denied claim.

All engineering changes, whether initiated by Abednego or Seller, will be processed pursuant to Abednego practices in effect at the time of the change. All Abednego approved engineering changes to the goods or services specification will be promptly implemented by Seller as directed by Abednego. Price changes for Abednego approved engineering changes are to be based solely on the design cost variance from the superseded design and must be substantiated with appropriate documentation satisfactory to Abednego.

#### **15.0 Claims Adjustment**

Abednego may at any time and without notice deduct or set-off Seller’s claims for money due or to become due from Abednego against any claims that Abednego has or may have arising out of this or any other transaction between Abednego and Seller.

#### **16.0 Customs**

Seller will promptly notify Abednego in writing of material or components used by Seller in filling this order, which Seller purchases in a country other than the country in which the goods are delivered to Abednego. Seller will furnish Abednego with any documentation and information necessary to establish the country of origin or to comply with the applicable country’s rules of origin requirements. Seller will promptly advise Abednego of any material or components imported into the country of origin and any duty included in the purchase price of the goods.

The rights to, and benefits of, any duty drawback, including rights developed by substitution and rights which may be acquired from Seller’s suppliers and export credits, to the extent transferable to Abednego, are the property of Abednego. Seller will provide all documentation and information and take any necessary steps to drawback any duty, taxes or fees paid to, and to receive export credits from the government of the country of origin upon exportation of the goods from such country.

The responsibility for customs duty and customs brokers’ fees will be determined in accordance with the transportation code stated in this order. If Abednego is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including but not limited to marking, anti-dumping and countervailing duties, to the extent permitted under

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

the law of the country of importation. Seller will provide Abednego or the appropriate governmental authority all documentation and information required by law or regulation or otherwise necessary to determine the proper minimum duty to be paid upon the importation of the goods into any country or to obtain any refunds or drawbacks of duties paid.

Seller will advise Abednego if the importation or exportation of the goods requires an import or export license. Seller will assist Abednego in obtaining any such license.

Seller will provide to Abednego and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the goods into the country in which the goods are delivered to Abednego. Seller warrants that the information regarding the import or export of the goods supplied to Abednego is true and correct in every respect and that all sales covered by this order will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported.

#### **17.0 Use of Abednego’s Name**

Seller will not, without the prior written consent of Abednego in any manner publish the fact that Seller has furnished or contracted to furnish Abednego goods and/or services, or use the name of trademarks of Abednego, its products, or any of its associated companies in Seller’s advertising or other publication. Seller will not place its, or any third party’s trademark or other designation on the good or service if the good or service bears a Abednego trademark or an identifying mark specified by Abednego, or if the good or service is peculiar to Abednego’s design.

#### **18.0 Information Disclosed**

The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Abednego in connection with the performance of this order are the property of Abednego and may be covered by one or more Abednego patents, patent applications or copyrights. Seller will handle all of this information in such a manner to ensure that it is not used for any purpose detrimental to the interests of Abednego. Unless expressly provided herein or otherwise agreed to in writing by Abednego, Seller’s disclosure rights regarding products or services related to this order, and information relating thereto shall be limited to any valid copyright thereon or patent Seller may hold covering the manufacture, use and sale of the products or services.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

#### **19.0 Confidentiality**

In connection with the performance of Seller’s obligations hereunder, Seller may have access to information that is considered confidential by Abednego. This information may include, but is not limited to technical know how, technical specifications, protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data (“Confidential Information”). Seller shall use Abednego’s Confidential Information only for the purposes of, and in performance of its obligations hereunder. Seller shall maintain the confidentiality of Abednego’s Confidential Information in the same manner in which it protects its own confidential information of like kind, but in no event shall Seller take less than reasonable precautions to prevent the unauthorized disclosure or use of Abednego’s Confidential Information. Upon termination of this agreement, Seller shall return Abednego’s Confidential Information and shall not use Abednego’s Confidential Information for its own, or any third party’s, benefit. Seller’s confidentiality obligations shall survive for so long as the Confidential Information remains confidential. In order to assure that Abednego is able to obtain the full benefit of the restrictions set forth in this Paragraph 19, Abednego shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law. No bond, indemnity or other security will be required to obtain such injunctive relief. Upon Abednego’s request, Seller shall execute a confidentiality agreement relating to the goods and services to be provided hereunder in the form provided by Abednego.

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Abednego hereunder.

Abednego shall be entitled to make a reasonable number of copies of any confidential or technical information or materials which it shall receive hereunder, including but not necessarily limited to, manuals, brochures, books or instructions. Such copies shall only be used by Abednego along with its employees, agents, contractors, and representatives in conjunction with their use of the services or materials covered hereunder.

#### **20.0 Intellectual Property**

All works of original authorship, ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property created by Seller in connection with, or pursuant to, its performance hereunder (collectively, “Proprietary Materials”), and all intellectual

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

property rights in such Proprietary Materials, are owned by Abednego and not by Seller. Seller agrees that all such Proprietary Materials created by Seller are “works made for hire” as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Seller owns any intellectual property rights in the Proprietary Materials, Seller hereby irrevocably assigns to Abednego all rights, title and interest, including copyrights and patent rights, in such Proprietary Materials.

No rights are granted to Seller under any Abednego patents except as may be necessary to fulfill Seller’s obligations under this order. Seller agrees to defend all suits, actions or proceedings which may be brought against Abednego, any of its associated companies or its customers for alleged infringement of any proprietary interest resulting from the use of sale or the goods or services provided hereunder and to pay all expense and fees of counsel which may be incurred in defending, and all costs, damages, or other recoveries in every such suit.

#### **21.0 Assignment**

This order will not be assigned or delegated, in whole or in part, without Abednego’s prior written consent, including, but not limited to, the subcontracting of work to be performed hereunder. If Abednego consents to Seller’s subcontracting of any of Seller’s duties hereunder, Seller will ensure that the subcontractor agrees to be bound by all of these terms and conditions and Seller shall remain liable for all activities of such subcontractor.

#### **22.0 Termination at Abednego’s Option**

Abednego may terminate this purchase order at any time without cause, in whole or in part, by written notice, whereupon Seller will stop work on the date and to the extent specified in such notice and terminate all related orders and subcontracts. Seller’s sole and exclusive recovery from Abednego (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination, will be the cost for finished work accepted by Abednego, the documented cost to Seller of work in process allocable to the terminated work and the cost of raw material allocable to the terminated work. No claim shall be allowed to the extent it requires recognizing claims in excess of any prior Abednego authorization for goods or services. Within thirty (30) days after receipt of termination notice, Seller will submit in writing all allowed claims resulting from such termination. Abednego will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. Title and right of possession to all delivered goods and services shall vest in Abednego immediately upon Abednego’s tender of such payment on account of termination. The provisions of the Clause will not apply to

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

any cancellation by Abednego for default by Seller or pursuant to the following sentence or for any other cause recognized by law or specified herein. Notwithstanding the foregoing, Abednego may terminate this agreement or any purchase order effective immediately at any time and without any liability by providing written notice to Seller, if Abednego’s contract(s) with its customers is suspended or terminated for any reason.

#### **23.0 Cancellation for Default**

If Seller (i) fails to deliver or threatens not to deliver goods or perform services at the time specified herein, or (ii) breaches, threatens to breach, fails to perform or threatens not to perform any other provisions hereof and does not cure such breach or failure within a period of ten (10) days after receipt of written notice from Abednego specifying such breach or failure, or (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, (iv) is merged into another company, sells all or substantially all of its assets and/or is expropriated or nationalized; or (v) Abednego reasonably believes that Seller will not be able to perform its obligations hereunder, Abednego may cancel the whole or any part of this agreement without any liability, except for payment due for goods and services delivered and accepted. In order to terminate the agreement pursuant to subclause (v) of the previous sentence, Abednego shall have provided notice to Seller of its reasonable belief that Seller will not be able to perform its obligations in accordance with these terms and conditions, at which time Seller shall have forty-eight (48) hours to submit to Abednego a written plan providing reasonable assurances of its ability to perform hereunder and the basis of such assurances. If Abednego is not satisfied, in its reasonable discretion, with the assurances so provided or if such assurances have not been provided, then Abednego may immediately terminate the agreement by providing written notice to Seller. Upon termination pursuant to this Paragraph 23, Abednego will have the right, and on notice to Seller, to take title to and possession of all or any part of such goods or services performed by Seller hereunder.

#### **24.0 Taxes**

The Seller shall be responsible for all taxes unless the goods purchased hereunder are for resale or for an exempt purpose and are exempt from state and local sales or use taxes. Unless otherwise expressly stated herein, all prices for goods and services include all applicable federal, state, provincial, and local taxes. If Seller is required by law to collect from Abednego any such taxes, such amounts will not be in addition to the purchase price, Seller will separately invoice Abednego for such amounts and such amounts will be credited against Abednego’s payment of the purchase price. Seller will provide Abednego with whatever information and documentation that is required under local law in order

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

to enable Abednego to recover any sales, value added, or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by Abednego.

#### **25.0 Remedies**

The rights and remedies herein reserved to Abednego are cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver of any breach of any provision of these terms and conditions will constitute a waiver of any other breach or a waiver of such provision unless such waiver is in writing and specifically covers future breaches.

#### **26.0 Required Compliance**

In providing goods or services hereunder, Seller will comply with any and all applicable Federal, State and Local laws and regulations promulgated thereunder. Seller will defend, indemnify and hold Abednego harmless from and against any and all claims, losses, damages, costs and expenses resulting from or arising out of any failure of Seller or Seller’s employees, agents and subcontractors to comply with any applicable governmental regulations and/or statutes.

#### **27.0 Governing Law and Venue**

The purchase order and all transactions between Abednego and Seller will be governed by and construed in accordance with the laws of Michigan as if entirely performed therein. Each of Seller and Abednego irrevocably submits to the jurisdiction of the Circuit Court of Oakland County in the State of Michigan and the United States District Court for the Eastern District of Michigan in any action arising out of or relating to this purchase order, and hereby irrevocably agrees that all claims in respect of such action may be heard and determined in such state or federal court. Each of Seller and Abednego hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Seller and Abednego further agree, to the fullest extent permitted by law, that a final and unappealable judgment against any of them in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment. To the extent that either of Seller or Abednego has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, each of Seller and Abednego hereby irrevocably waives such immunity in respect of its obligations hereunder.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

#### **28.0 Independent Contractors**

Abednego and Seller are independent contractors, and nothing herein makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party. All labor, staging, hoist, tools and equipment necessary for Seller to perform its obligations hereunder shall be furnished by Seller, except such equipment as may, by mutual agreement of the parties, be furnished by Abednego. To the extent that Seller's agents, employees or authorized subcontractors enter upon premises occupied by or under the control of Abednego, or any of its customers or suppliers in the course of performance hereunder, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person, or any damage to property arising out of any acts or omissions in connection with its performance hereunder. In accepting the purchase order, Seller assumes full responsibility and exclusive liability for the payment of all contributions and payroll taxes, federal, state, provincial, local and foreign, if applicable, as to all employees engaged in the performance of the work to be performed hereunder and further agrees to meet and comply with all the requirements that may now or in the future be specified under (a) the general rules and regulations of the United States Social Security Board as established by the Social Security Act, and (b) any applicable federal, state, provincial, local or foreign laws, orders, rules, regulations or ordinances relating to unemployment compensation or insurance or the like.

#### **29.0 Force Majure**

Neither party shall be liable to the other party for any delay in a scheduled delivery or a failure in performance caused by acts beyond such party's reasonable control, including without limitation, flood, war, embargo, riot, or the intervention of any government authority. Should Seller be delayed in the delivery or completion of the goods or services by the occurrence of one of the foregoing events or by damage caused by fire or other casualty for which Seller is not responsible, and in no way caused by, or resulting from, default or collusion on the part of Seller, then the scheduled delivery or completion of the goods or services shall be extended not more than the number of days that Seller has been thus delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Abednego within forty-eight (48) hours of the onset of such delay. If Seller is unable to perform for any reason, Abednego may purchase goods and services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three (3) business days after written request by Abednego, Seller shall provide adequate assurances that Seller's non-performance will not exceed thirty (30) days. If Seller does not provide those assurances, or if Seller's non-performance

## Abednego Environmental Services, LLC (“Abednego”)

### Production Materials Purchase Order General Terms and Conditions

exceeds thirty (30) days, Abednego may terminate the purchase order without liability to Seller.

#### **30. Supplier Diversity.**

Seller acknowledges that Abednego and its customers may have programs designed to encourage the use of minority and/or women-owned suppliers (“Diverse Suppliers”). Seller agrees to use its best efforts to support the requirements of such programs. Seller shall (a) provide Abednego with a written summary, in a format provided by or otherwise approved by Abednego, of the dollar value of the content of the goods and services supplied hereunder that is attributable to Diverse Suppliers and (b) comply with the target set by Abednego, if any, for the amount of content to be provided by Diverse Suppliers.

#### **31. Security and Solvency**

(a) Security Interest. Seller grants to Abednego a security interest (“Security Interest”) in the materials, components, contracts, intellectual property, and all other property that are used in the acquisition, assembly, and manufacture of the Goods, including Required Tooling and Purchased Tooling and in the completed Goods (“Security”) to secure Seller’s return of any deposits and performance of other obligations of seller, and grants Abednego an irrevocable power of attorney coupled with an interest to execute and file appropriate financing statements evidencing the Security Interest and the interests of Abednego and its Customers in property furnished by them. The Security Interest attaches at the time the Security is identified to the Order. The Security secures the performance of Seller under the Order including the obligation of Seller to repay to Abednego all monies paid on the Order if Seller defaults under the Order. Seller shall cooperate with Abednego and provide documents reasonably requested by Abednego, to enable Abednego to perfect its Security Interest. All Security shall be marked, tagged, or otherwise identified by Seller as being subject to the Security Interest. Abednego may inspect the Security during Seller’s normal business hours. Seller shall insure and maintain the Security for the benefit of Seller and Abednego.

(b) Seller’s Solvency. Seller represents and warrants to Abednego as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller’s acceptance of each Release under the Order and at the time of each delivery under the Order): (i) that it is solvent and is paying all debts as they become due; (ii) that it is in compliance with all loan covenants and other obligations; (iii) that all financial information provided by Seller to Abednego concerning Seller is true and accurate; (iv) that such financial

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

information fairly represents Seller’s financial condition; and (v) that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied. Seller shall respond in writing within three business days to any written demand by Abednego for assurances (with supporting documentation) of the willingness and ability to perform Seller’s obligations.

(c) Abednego’s Access to Facilities. If Seller experiences any delivery or operational problems, Abednego may, but is not required to, designate a representative to be present in Seller’s applicable facility to observe Seller’s operations. If Abednego provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under any Order, Seller shall reimburse Abednego for all costs, including attorneys’ and other professionals’ fees, incurred by Abednego in connection with such accommodation and shall grant a right of access to Abednego to use Seller’s premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement prepared by Abednego providing reasonable compensation to Seller.

(d) Seller’s Insolvency. Purchaser may immediately terminate or suspend each Order without any liability of Abednego to Seller except for payment of Goods previously delivered and in compliance with an Order upon the occurrence of any of the following or any other similar or comparable event: (i) insolvency of Seller; (ii) Seller’s inability to promptly provide Abednego with adequate and reasonable assurance of Seller’s financial capability to perform timely any of Seller’s obligations under any Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; (vi) cessation of Seller’s normal operations; or (vii) execution of an assignment for the benefit of creditors of Seller. Seller shall respond in writing within three business days to any written demand by Abednego for assurances of the willingness and ability to perform Seller’s obligations.

### **32. Liens**

Seller warrants that no lien shall be filed by Seller or anyone claiming under or through Seller against Abednego, the Goods, the Furnished Property, the site for delivery or installation of the Goods, or Abednego’s Customer, for materials, labor, services, equipment or goods furnished as part of the Goods or Furnished Property. Seller waives any right it may have pertaining to, and agrees not to file or otherwise assert or prosecute or suffer or permit, any mechanic’s,

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

materialman’s, or other type of liens to be filed or continued against any property of Abednego. Seller shall insert the prior sentence in any lower tier subcontract or purchase order for labor, equipment or materials furnished. If any such lien shall be filed by Seller’s direct subcontractor, or any of its lower tier subcontractors, Seller shall take any and all steps necessary for the immediate release and discharge of such lien, in the manner required by applicable law, upon demand by Abednego. Seller shall secure and furnish to Abednego and its Customer, upon request, a waiver of lien from each subcontractor under it.

#### **33. Installation and Continuation**

An Order may include the installation and/or the improvement of real estate (“Construction Order”) owned or leased by a third party (“Owner”) as part of an overall project (“Project”). The following additional and cumulative terms shall apply to a Construction Order.

(a) Seller shall not assign an Order or contract to perform work directly or quote prices or costs for the Owner or any other provider to the Project without the express, written consent of an officer of Abednego.

(b) Seller shall execute partial and final waivers, sworn statements, and affidavits, and shall secure such similar documents Seller’s vendors in connection therewith, as may be necessary to expedite payment from Owner to Abednego. The prices include, and Seller shall comply with and pay for, all items, without exception.

(c) Abednego shall pay Seller for services and goods satisfactorily completed and incorporated into the Project on the 10th day of each month at the rate of 90% of the value of the work completed and incorporated during the preceding month, as determined 30 days after completion and acceptance of the work by Abednego and Owner, provided Seller strictly adheres to the following billing procedures: (a) all requests for payment with required documentation, must be submitted by the 20th day of the month preceding the month in which payment is desired; (b) all requests for payment must be accompanied by invoices, in duplicate, with sworn statements and waivers of lien; (c) all approvals from Abednego and Owner are submitted; and (d) Abednego has been paid for such invoiced Goods.

(d) No payment is due hereunder to Seller for Seller’s goods or services, whether progress payment or final payment, unless and until such progress payment or final payment has been made to Abednego by Owner.

(e) Seller represents it has fully examined all documents related to Seller’s performance on the Project and has not relied on representations or

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

warranties of Seller or Owner. Seller shall examine the work installed by others, insofar as it influences Seller’s performance, and if any defects exist, Seller shall not proceed until such defects are corrected and/or he is given written authorization to proceed signed by an officer of Abednego.

(f) Seller shall have a highly competent representative at the Project at all times with full authority to act as agent whenever Seller is performing obligations at the Project.

(g) Seller shall provide sufficient safe and proper facilities at all times at Seller’s location and Project for inspection of work by Owner and/or Abednego or authorized representatives of either of them, and, on request of Abednego, to produce all vouchers showing quality and amount of materials used.

(h) Seller and Seller’s suppliers shall employ only those workmen who will be in harmony with other workmen at the Project and will cause no conflicts or disputes to occur which will result in delays or cessation of work. Abednego may, but is not required to, require Seller to dismiss any workmen or workman, or others employed on the Project who Abednego may deem incompetent, improper or a hindrance to the progress of the Project, and no such individual shall be employed in performing any of an Order without the written consent of Abednego.

(i) Seller shall not accept instructions from any source other than a representative of Abednego as authorized in a writing from Abednego.

(j) Abednego may, at any time, by the issuance of a change order to Seller; increase or decrease quantities, operations or quantities covered by an Order; change drawings or plans, instructions, specifications, etc.; make changes in time and delivery schedules; issue a suspension of work order; cancel an Order, without liability for anticipated profits or overhead on goods or services not completed. If such changes cause an increase or decrease in the amount of goods or services, time or performance or cost, an equitable adjustment shall be made in the price and/or schedule. An Order includes all goods and services required for full performance of Abednego’s obligations. If Seller believes it has been asked or required to provide goods and services not covered by an Order, it is Seller’s sole responsibility to request a change order. Any such request and change order must be made at the time the change occurs, in writing, signed by Seller. Abednego shall not be liable for claims for payment of unauthorized extras or verbal agreements. Seller shall make no claim for additional work performed, delay, or otherwise, unless done in pursuance of such a change order, and notice of any claim whatsoever must be given to Abednego in writing before the next ensuing payment under an Order, or the claim shall be considered as abandoned and released.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

(k) Seller has: inspected, examined, considered, and consulted with authorities and experts regarding the complete plans and specifications, general contract documents applicable to all work on the Project and Seller’s work specifically, site and soil conditions, existing facilities and conditions; local code requirements and all other applicable governmental agencies, laws, statutes and regulations; sales, use, and other taxes; requirements of proposed schedules; permits, inspections, and fees; safety laws and barricade requirements; wages and pending wage and cost escalations; and all other items related to the Goods to be provided under an Order.

(l) Seller warrants that all labor, materials and equipment furnished under an Order shall remain free of defects and failure for a period of two years from the date of acceptance of the completed Project; and that Seller shall, within 48 hours after notification, make good such defects at Seller’s own expense and without cost to Abednego or to Owner, or Seller shall request in writing, additional time, indicating conditions and/or restraints which prevent Seller’s immediate correction of defects. If Seller is unwilling or unable to repair such defects, within a reasonable time, or should Seller fail to reply, Abednego may repair or replace such defect in goods or services, and Seller shall pay Abednego all costs thereof, plus 15% overhead and profit. No action or failure of Abednego to discover defects or reject any items not in accordance with an Order shall be construed to be an acceptance of such items.

(m) If Seller should at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of new materials of proper quality or fail in any respect to perform Seller’s obligations with promptness and diligence, or fail in performance of any of the obligations in an Order, Abednego may, after three calendar days written notice to Seller, provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to Seller under an Order. If Seller expressly breaches an Order in any way, or fails to ship or perform on time, or fails to perform in a manner satisfactory to Seller or Owner, or if bankruptcy proceedings are begun by or against Seller, or if Seller makes a general assignment for the benefit of Seller’s creditors, or if Seller fails to pay Seller’s suppliers within 15 days of the due date or Seller’s workmen on a pay day, or if a receiver is appointed for Seller’s property, Abednego may give written notice of termination of an Order and take possession of all materials, tools and equipment, and complete Seller’s performance by whatever method may be deemed expedient; and in case of such termination, Seller shall not be entitled to receive any further payment under an Order until Seller’s performance shall be wholly completed, at which time, if the unpaid balance of the amount to be paid under an Order shall exceed expenses incurred by Abednego in finishing work, such amounts shall be paid by Abednego to Seller. If such expense shall exceed such unpaid balance, Seller shall pay the difference to Abednego.

## **Abednego Environmental Services, LLC (“Abednego”)**

### **Production Materials Purchase Order General Terms and Conditions**

(n) Time is of the essence, and any delays will result in substantial damages to Abednego. Seller shall man the job with sufficient quantities of competent workmen, equipment and new materials to maintain schedule and to insure a smooth, uninterrupted flow of work; and in violation thereof, to pay to Abednego the sum of \$10,000 for each day of delay resulting from any violation of an Order. Seller further agrees that he shall, within three days of acceptance of an Order, submit to Abednego for approval brochures, and/or shop drawings and samples of all materials, together with tentative delivery dates and shipping time requirements. After said items are approved and ordered, Seller shall notify Abednego in writing, immediately, of any changes or delays regarding said materials or other conditions which might affect Seller’s performance under an Order.

(o) No lien shall be filed by Seller or other party in privity with Seller against Owner, the Project or the real estate upon which the Project is situated, for materials, labor, services, equipment, goods furnished to or for the Project. Seller waives any right it may have pertaining to, and agrees not to file or otherwise assert or prosecute or suffer or permit any mechanic’s, materialman’s, or other type of liens to be filed or continued against any property of Owner. Subcontractor shall insert the prior sentence in any lower tier subcontract or purchase order for labor, equipment or materials furnished to or for the Project. If any such lien shall be filed by subcontractor, or any of its lower tier subcontractors, subcontractor shall take any and all steps necessary and proper for the release and discharge of such lien, in the manner required by the law upon demand by Owner or Contractor. Subcontractor shall defend, indemnify and hold Owner and Contractor harmless from and against all liens, losses, damages, claims, debts and actions of any kind whatsoever, which might be asserted at any time whatsoever, arising in any way out of the recording of a lien by subcontractor or any lower tier subcontractor under it, including without limitation all costs, reasonable attorney fees and expenses incurred by Owner or Contractor in the releasing, satisfying and discharging of such liens and enforcement of this clause. Further, subcontractor shall secure and furnish to Owner and Contractor, upon request, a waiver of lien from each lower tier subcontractor under it. Owner shall be construed to include, without limitation, the owner of the property on which the Project is situated and any owner of the improvements.