



General Purchase Order Terms  
Orbia Advance Corporation, S.A.B de C.V.  
MEXICHEM CANADA LIMITED  
v. 08-2022

[www.duraline.com](http://www.duraline.com)

**ANY SUPPLY OF GOODS, PERFORMANCE OF SERVICES OR OTHER RELATED ACTIVITIES BY THE ENTITY NAMED IN THE RELEVANT PURCHASE ORDER (“VENDOR”) TO MEXICHEM CANADA LIMITED (“DURA-LINE”) (EACH OF THEM A “PARTY”, AND COLLECTIVELY, THE “PARTIES”), IS SUBJECT TO AND GOVERNED BY THESE GENERAL TERMS AND CONDITIONS OF PURCHASE (“TERMS”). ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY VENDOR FOR SUCH GOODS OR SERVICES ARE EXPRESSLY OBJECTED TO AND SHALL NOT BE BINDING UPON DURA-LINE UNLESS EXPRESSLY ACCEPTED IN WRITING BY DURA-LINE’S AUTHORIZED REPRESENTATIVE. ANY DELIVERY OF GOODS OR PERFORMANCE OF SERVICES BY VENDOR SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS.**

## **1. Payment Terms**

Vendor shall submit an invoice to DURA-LINE no earlier than the date upon which all of the Goods under a single purchase order are delivered to DURA-LINE or the Services are completed. Invoices shall include a description of the Goods or Services provided and, as applicable, part numbers, quantity, unit of measure, hours, and the unit and total prices. Invoices must match the relevant purchase order pricing, quantities, and terms identified on the face of such purchase order, and must be sent to the invoice address listed on the purchase order.

The Invoices must also include the following information in English, or in the official language of the country in which DURA-LINE is based: (a) name and address of Vendor and DURA-LINE entity purchasing the Goods or receiving the Services; (b) name of shipper (if different from Vendor); (c) the relevant DURA-LINE purchase order number(s); (d) country of export; (e) detailed description of the Goods or Services; (f) Harmonized Tariff Schedule number (if applicable); (g) country of origin (manufacture) of the Goods, or if multiple countries of origin, the country of origin of each part shipped; (h) weights of the Goods shipped; (i) currency in which the sale was made; (j) payment terms consistent with these Terms; (k) shipment terms used; and (l) all rebates or discounts. Each invoice must refer to a single purchase order. The invoice will be accompanied (if applicable) by a signed bill of lading or express receipt evidencing shipment. Payment of an invoice does not constitute acceptance of the Goods or Services and, in accordance with these Terms, is subject to appropriate adjustment should Vendor fail to meet the requirements of the purchase order.

Unless otherwise agreed by DURA-LINE in a purchase order, all applicable taxes and other government charges including, but not limited to, sales, use, or excise taxes, value added tax, import duties, customs duties and fees must be separately itemized and identified on the invoice.

Unless otherwise agreed by DURA-LINE in a purchase order, payment will be made via wire transfer within sixty (60) calendar days from the last business day of the month in which the corresponding invoice was received. If DURA-LINE fails to pay any undisputed invoices by the due date, Vendor shall provide DURA-LINE with written notice of such failure and DURA-LINE shall remedy such failure within 30 days of receipt of such notice.

Invoices will not be approved unless they comply with this clause and accurately reference conforming Goods received by DURA-LINE or Services satisfactorily performed for DURA-LINE. If DURA-LINE (acting reasonably and in good faith) disputes an invoice on the grounds that the Goods/Services or the invoice itself fails to comply with the provisions of the purchase order or these Terms, DURA-LINE will be entitled to withhold payment of such invoice until the dispute is resolved. Unless otherwise agreed by DURA-LINE in a

purchase order or otherwise in writing, any invoices which DURA-LINE receives more than six months after the delivery of the Goods or the date on which DURA-LINE accepted the Services shall not be accepted. Vendor’s entitlement to payment of these invoices shall lapse through the mere expiry of such period.

If Vendor owes any amounts to DURA-LINE, on any grounds, DURA-LINE shall be entitled to offset any such owed amounts against amounts due to Vendor under the purchase order or otherwise.

## **2. Price**

Vendor shall furnish the Goods or Services at the prices stated on the face of the relevant purchase order. Unless otherwise agreed by DURA-LINE in the purchase order, the prices stated in the purchase order are final and may not be modified. Unless otherwise agreed by DURA-LINE in a purchase order, the prices payable by DURA-LINE shall include:

- a) Charges and other levies or costs incurred when applying for the permits required for the performance of the Service or delivery of the Goods.
- b) Fees for the use of intellectual and industrial property rights, including any software.
- c) All costs relating to or arising from the delivery of the agreed Goods or the provision of the agreed Services.
- d) The costs of packaging, transport, storage, insurance premiums, installation and putting into operation of Goods on location.
- e) All that is necessary for the proper execution of the purchase order, taking account of the applicable standards, regulations, and requirements of good workmanship, even if these were not expressly mentioned in the purchase order.

Unless otherwise agreed by DURA-LINE in a purchase order, any other expense or disbursement required for rendering the Services or delivering the Goods will be fully borne by Vendor.

If the Parties agree to reduced pricing for the Goods or Services, such pricing shall immediately apply to all Goods in consignment or under a stocking arrangement with Vendor, or all Services pending to be provided, all undelivered Goods or unprovided Services, all open and unfilled purchase orders, all future purchase orders, and all unconsumed inventory owned by DURA-LINE.

Vendor warrants that the prices charged for the Goods or Services delivered under the purchase order are no higher than the prices charged by Vendor to its other customers for similar Goods or Services in similar commercial circumstances. If Vendor charges a lower price for similar Goods or Services in similar commercial circumstances, Vendor shall promptly notify DURA-LINE and apply such lower price to all Goods or Services ordered under the purchase order. Any difference in pricing shall be retroactively applied to the first date on which the Goods or Services were sold to such other customers at the lower price. The Vendor shall pay to DURA-LINE any applicable refund either (at DURA-LINE’s sole option) by a credit note applied to the next purchase order or in cash within 30 days.

If at any time before full performance of the purchase order DURA-LINE notifies Vendor in writing that DURA-LINE has received a written offer on similar terms and conditions from another supplier for similar Goods or Services at a price lower than the price set forth



in the purchase order, Vendor must immediately meet the lower price for any undelivered Goods or unprovided Services. If Vendor fails to meet the lower price DURA-LINE, at its option, may terminate the balance of the purchase order without liability.

### 3. Delivery, Shipment and Packaging

Vendor shall deliver the Goods and/or perform the Services in accordance with the dates, locations and requirements set out in the purchase order. Such delivery times with regard to the Goods or Services (or portions of them, if DURA-LINE provides written authorization for delivery in installments) to be delivered by Vendor shall be binding and time shall be of the essence for all deliveries and/or performance. If these delivery times are exceeded, Vendor shall automatically be in breach of contract without notice of default being required to that effect. Unless otherwise agreed by DURA-LINE in a purchase order, all Goods shipped in one day from and to a single location must be consolidated on one bill of lading or air waybill, as appropriate. Execution of the purchase order in partial deliveries shall require DURA-LINE's prior written consent. If DURA-LINE so requests, Vendor shall be obliged to submit a written production or execution schedule and/or to cooperate in progress monitoring.

Vendor shall provide DURA-LINE with adequate written notification of any impending or potential failure to meet time for delivery of Goods or performance of Services (and in any event shall notify DURA-LINE of such delay within 24 hours of becoming aware of the possibility of such delay).

Unless otherwise agreed to by DURA-LINE in a purchase order, for each calendar day by which delivery and/or performance times are exceeded, Vendor shall owe DURA-LINE liquidated damages of 0.5% of the total sum payable under the relevant purchase order, with a maximum liquidated damages amount of 10% of such sum. Such liquidated damages shall be immediately due and payable and shall be without prejudice to DURA-LINE's right to claim compensation of the actual damage according to applicable law. The effective delivery date will be the date indicated in the document of reception or completion, as appropriate, duly signed by an authorized representative of DURA-LINE to receive the Goods or supervise the Services provided.

In any event, if the Goods are not delivered or the Services are not performed by the delivery dates set forth in the relevant purchase order or the delivery schedule is endangered for any reason other than DURA-LINE's fault then, upon DURA-LINE's request, Vendor will deliver Goods by the most expeditious shipping method required or provide the Services by any means necessary to fulfill the purchase order delivery requirements at its expense.

All Goods shall be packaged according to DURA-LINE's instructions or, if none, according to good commercial practice in a manner sufficient to ensure receipt in an undamaged condition. DURA-LINE will not be liable for any discharge, spill, or other environmental incident (including clean-up costs) involving any Goods shipped under the purchase order until risk has passed to DURA-LINE in accordance with the position agreed between the Parties in the purchase order or these Terms for such Goods. All containers will be properly marked for identification as instructed on DURA-LINE's purchase order and contain a packing slip that details, at a minimum, the DURA-LINE purchase order number(s), product part number, detailed product description, country of origin, total number of boxes in shipment, quantity of product shipped, and final

delivery address. Goods shipped in advance of DURA-LINE's delivery schedule or received by DURA-LINE prior to the delivery date set forth in the relevant purchase order may be returned at Vendor's expense. Vendor will give notice of shipment to DURA-LINE when the Goods are delivered to a carrier for transportation and Vendor will send DURA-LINE a complete set of shipping documents including the commercial invoice, packing list, and air waybill, or three original parts of the combined through-bill of lading, clean without notation, necessary to release the Goods to DURA-LINE's custody. The purchase order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, and air waybills.

All Goods, unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the Goods in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits. Vendor will provide DURA-LINE with (a) the Harmonized Tariff Schedule number (if applicable), country of origin information or certificates, manufacturer's affidavits, applicable free trade agreement ("FTA") certificates, and any other documents or information DURA-LINE may require complying with international trade regulations or to lawfully minimize duties, taxes, and fees, and (b) FTA certificates for all Goods that qualify under one or more FTAs. Vendor will provide DURA-LINE all documents, records, and other supporting information necessary to substantiate the Goods' qualification under an FTA. Vendor will exert reasonable efforts to qualify the Goods under FTAs.

Vendor shall be obliged to keep a stock of spare parts for relevant Goods supplied during the customary lifespan of such Goods, in any case during a period of at least one year after the supply of the Goods concerned, to be sold and delivered on identical terms.

DURA-LINE reserves the right to reject, at no expense to DURA-LINE, all or any part of any delivery that varies from the quantity or type set forth in the relevant purchase order or authorized in writing by DURA-LINE for shipment or provision. No early deliveries can be made without the prior consent of DURA-LINE. Vendor will not make any substitutions without DURA-LINE's prior written approval.

Unless otherwise agreed by DURA-LINE in a purchase order, Goods shall be delivered by Vendor DDP (Incoterms 2020) (other than for US domestic shipments, where Goods shall be delivered FOB Origin, Freight Collect) to the location stated in the purchase order. Title to such Goods shall transfer to DURA-LINE on the earlier of: (a) the transfer of risk of loss or damage in accordance with the position agreed between the Parties for those Goods in the purchase order or these Terms, and (b) the date on which DURA-LINE makes payment for such Goods. However, if the installation of the Goods by Vendor has been agreed, Vendor shall bear all the risk in respect of such Goods until installed and accepted or put into operation by DURA-LINE, regardless of whether DURA-LINE already has full title to these Goods. If DURA-LINE makes payment for Goods prior to delivery, Vendor must ensure that such Goods are identified and kept identifiable, and segregated from Vendor's goods, as much as possible and Vendor shall count as the holder for DURA-LINE in respect of such Goods.

If DURA-LINE supplies or pays for raw materials, semi-finished products, materials and components, tools, jigs, dies, models, specifications, drawings, software, information carriers, or other property, these items shall be and remain DURA-LINE's property ("DURA-LINE Property"). DURA-LINE Property shall be used only in



the performance of work performed by Vendor under the relevant purchase order, unless DURA-LINE consents otherwise in writing. Vendor shall maintain, at its cost, in good working order all DURA-LINE Property and all property in which DURA-LINE acquires an interest under a purchase order and shall be responsible for all loss or damage to such property, except for normal wear and tear. Vendor shall clearly mark, maintain in inventory, and keep segregated or identifiable as DURA-LINE Property all of DURA-LINE Property. Vendor shall maintain insurance coverage on all DURA-LINE Property for the full replacement cost, and, upon DURA-LINE's request, Vendor shall provide to DURA-LINE a certificate of insurance evidencing compliance with these terms and identifying DURA-LINE as an additional insured. Subject to DURA-LINE's written consent, Vendor shall refrain from any act or omission with regard to these items that causes DURA-LINE to lose ownership thereof, whether by specification, accession, confusion of property or in any other way whatsoever. Furthermore, Vendor shall guarantee that the items are not encumbered or burdened with third-party rights. Vendor shall have no right of retention or right of suspension in respect of these items and shall have no lien over such items. After the completion of the purchase order, these items must be returned in good condition, ordinary wear and tear excepted.

#### **4. Storage**

If DURA-LINE requests Vendor to postpone the delivery of Goods, Vendor shall store, secure, and insure the Goods to be supplied appropriately packed and clearly marked as intended for DURA-LINE. DURA-LINE will reimburse Vendor's reasonable costs of such storage, subject to the provision of reasonable evidence of such costs and Vendor providing an appropriate invoice.

#### **5. Inspection**

Vendor shall be responsible for verifying and certifying that the quantity and quality of the Goods or Services is in accordance with the technical specifications of the relevant purchase order. Unless otherwise agreed by DURA-LINE in a purchase order, DURA-LINE shall be entitled to inspect all Goods and/or Services within fifteen (15) working days of delivery or performance to check that the quality and quantity of such Goods and/or Services corresponds to the requirements of the purchase order and these Terms.

In no case will the inspection carried out by DURA-LINE before, during or after delivery/acceptance, release Vendor from its obligations in connection with the Goods or Services.

#### **6. Refusal of Goods or Delivery**

If any Goods or Services are found upon inspection not to comply with the requirements of the purchase order or these Terms, DURA-LINE shall be entitled by written notice to Vendor to reject such Goods and/or Services. In such circumstances, DURA-LINE will have the right (without prejudice to any other right or remedy which it may have) to: (a) require Vendor (in the case of Goods) to replace such Goods at no cost to DURA-LINE within the period indicated in writing by DURA-LINE, (b) require Vendor (in the case of Services) to reperform such Services at no cost to DURA-LINE within the period indicated in writing by DURA-LINE, or (c) terminate the purchase order unilaterally on written notice. Goods rejected by DURA-LINE must be collected by Vendor at its own expense within five working days following receipt of the notification of rejection, at the location indicated by DURA-LINE. If such Goods are not collected by Vendor, the Goods will be (at DURA-LINE's sole option) either disposed of by DURA-LINE, in its sole discretion and at

Vendor's expense, or returned to Vendor at Vendor's expense and risk. Any amounts paid by DURA-LINE in relation to such disposal or return shall be refunded to DURA-LINE by Vendor within fourteen (14) days.

#### **7. Changes**

Vendor will not make any changes to the characteristics of the Goods or Services specified in a purchase order without the advance written approval of DURA-LINE. For these purposes, 'changes to characteristics' include, but are not limited to, changes to the production process, changes in manufacturing equipment, changes in manufacturing location, changes to suppliers, changes to raw materials, specification changes, or changes between a manual and automated process. This requirement applies whether or not the change affects costs and regardless of the type of change, including product improvements.

Vendor shall provide written notification to DURA-LINE, which shall be received by DURA-LINE no later than fifteen (15) working days prior to the implementation of any decision to stop commercializing the Goods, stop providing the Services, or any important change made to the Goods or Services or any of its processes, including, without limitation, changes that affect the processes, including any material change in its IT processes or its subcontractors, the acquisition of critical components, the design of the Goods or the location of the plant(s), or any other changes which impact or may impact the technical specifications of the Goods or Services, compliance with relevant regulations, lifecycle, availability, reliability or quality. In such circumstances, DURA-LINE shall have the option to terminate the purchase order, in whole or in part, without liability to Vendor.

#### **8. Warranty**

Vendor warrants, undertakes and represents to DURA-LINE, its successors, assigns, customers, and end users that during the entire warranty period specified below, all Goods furnished (including all replacement or corrected Goods or components) will (a) be free from defects in material, workmanship, and design, even if the design has been approved by DURA-LINE, (b) conform to applicable drawings, designs, quality control plans, specifications and samples and other descriptions furnished or specified by DURA-LINE, (c) be merchantable, (d) be fit for the intended purposes and operate as intended, (e) comply with all applicable laws, (f) be free and clear of any and all liens or other encumbrances, and (g) not infringe any patent, published patent application, or other intellectual property rights of any third party and not utilize misappropriated third party trade secret information.

Vendor warrants, undertakes and represents to DURA-LINE, its successors, assigns, customers, and end users, during the entire warranty period specified below: (a) it possesses the requisite expertise, facilities, and equipment necessary and appropriate to perform the Services, (b) the Services will be performed in accordance with applicable law and in a safe, workmanlike and professional manner with all reasonable skill and care, and (c) the Services will be performed in accordance with the highest standards in Vendor's industry.

Unless otherwise agreed by DURA-LINE in a purchase order, the warranty period shall be twenty-four (24) months from the date of delivery of the relevant Goods and/or satisfactory completion of the relevant Services.



The warranties set out in these Terms will survive any inspection, acceptance, or payment by DURA-LINE and shall be without prejudice to any other warranties in respect of the Goods and/or Services which may be implied by law or otherwise.

**If any Goods or Services fail to comply with the warranties set out above, DURA-LINE shall be entitled by written notice to Vendor to reject such Goods and/or Services and will have the right (without prejudice to any other right or remedy which it may have) to: (a) require Vendor (in the case of Goods) to replace such Goods at no cost to DURA-LINE within the period indicated in writing by DURA-LINE, (b) require Vendor (in the case of Services) to reperform such Services at no cost to DURA-LINE within the period indicated in writing by DURA-LINE, or (c) terminate the purchase order, in whole or in part, unilaterally on written notice. In the event DURA-LINE elects to terminate the purchase order, Vendor shall be liable for all costs of return or destruction, at DURA-LINE's discretion, and, in any case, Vendor shall immediately pay to DURA-LINE any amounts due, as set forth in DURA-LINE's notice of termination or other written notice.**

## 9. Imports

Vendor assumes all responsibility and liability for any shipments covered by the purchase order requiring any government import clearance. If government authorities declare or otherwise impose countervailing duties, antidumping duties, or retaliatory duties on the Goods imported under the purchase order, DURA-LINE reserves the right (without prejudice to any other right or remedy which it may have) to terminate the purchase order.

All drawback of duties, and rights thereto, related to duties paid by Vendor or by DURA-LINE when the Goods are imported, or any materials or components used in manufacturing of the Goods, will accrue to the exclusive benefit of DURA-LINE. Duty drawback rights include, but are not limited to, rights developed by substitution and duty drawback rights obtained from sub-tier suppliers related to the Goods. Vendor will provide DURA-LINE with all documents, records, and other supporting information necessary to obtain any duty drawback and will reasonably cooperate with DURA-LINE to obtain payment.

## 10. Stop Work/Suspension

At any time by written notice and at no cost, DURA-LINE may require Vendor to stop all or any part of the work under the purchase order for up to one hundred and twenty (120) days ("**Stop Work Order**"), and for any further period as agreed between the Parties. Immediately upon receipt of a Stop Work Order, Vendor will comply with its terms. At any time after the service of a Stop Work Order, DURA-LINE may, in whole or in part, either cancel the Stop Work Order or terminate the purchase order. In such circumstances, DURA-LINE shall reimburse Vendor for the reasonable, evidenced, unavoidable costs incurred by Vendor in relation to such purchase order (or relevant part of it) up until the date on which such notice was received; provided, however, that DURA-LINE shall not be, under any circumstances, liable for amounts in excess of the aggregate price of the Goods or Services under the purchase order. To the extent the Stop Work Order is cancelled or expires, Vendor must immediately resume work. Unless otherwise agreed by DURA-LINE in writing, no compensation shall be payable to Vendor in relation to the imposition, extension, expiry or cancellation of a Stop Work Order.

## 11. Termination

DURA-LINE may terminate the purchase order immediately in the following circumstances:

- a) If Vendor or the party that guaranteed Vendor's obligations or provided security applies for a provisional moratorium.
- b) If Vendor is declared insolvent, is wound up voluntarily or involuntarily, ceases substantial business activities, decides to wind up its business, files a winding-up petition, applies for a moratorium, if any petition is filed or proceedings commenced by or against Vendor relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
- c) If there are changes in Vendor's shareholders, insofar as this, in DURA-LINE's reasonable opinion, entails a considerable increase in risks for DURA-LINE.
- d) If an attachment is made against Vendor or if Vendor's assets are threatened with attachment or other judicial measures.
- e) If Vendor is involved in any fraudulent, misleading and/or unlawful activities.
- f) If DURA-LINE has legitimate reasons to believe that Vendor adversely affects, or will adversely affect, the reputation, good name or goodwill of DURA-LINE or DURA-LINE's products. In those cases, a notice of default shall not be required, and a breach shall be deemed to have occurred.
- g) If Vendor breaches any provision of these Terms or the purchase order and fails to remedy such breach within five working days or such longer period as DURA-LINE may in its absolute discretion specify.

Without prejudice to any other right or remedy which DURA-LINE may have, if Vendor breaches its obligations to DURA-LINE and DURA-LINE terminates the purchase order in whole or in part, DURA-LINE may charge Vendor for any additional cost it incurs in performing Vendor's obligations or in having such obligations performed by a third party.

Without prejudice to any other right or remedy which it may have, DURA-LINE shall be entitled to terminate the purchase order (or any part of it) by not less than 14 days' written notice to Vendor at any time and for any reason. In such circumstances, DURA-LINE shall reimburse Vendor for the reasonable, evidenced, unavoidable costs incurred by Vendor in relation to such purchase order (or relevant part of it) up until the date on which such notice was received provided, however, that DURA-LINE shall not be, under any circumstances, liable for amounts in excess of the aggregate price of the Goods or Services under the purchase order.

## 12. Compromised Performance

If DURA-LINE, in its sole discretion, determines there is a significant risk that Vendor will fail to meet its performance or delivery requirements under the purchase order, DURA-LINE may require Vendor to perform under a DURA-LINE performance assurance plan. The performance assurance plan may include specific





reporting and performance requirements reasonably tailored to ensure Vendor's adequate performance under identified provisions of the purchase order. Any failure by Vendor to satisfy the terms of the performance assurance plan shall be a breach of the purchase order and these Terms, and, in addition to any other rights or remedies it may have, DURA-LINE shall be entitled to immediately terminate the purchase order.

### 13. Force Majeure

Neither Party will be in default for any delay or failure to perform its obligations to the extent such delay or failure to perform is due to a Force Majeure Event (as defined in this clause 13) and without its fault or negligence. The Party affected by a Force Majeure Event will promptly provide written notice to the other, explaining in detail the full particulars and expected duration of the Force Majeure Event, the obligations it is not able to comply with and the measures it is taking to mitigate the effects of such Force Majeure Event. If Vendor's delivery or performance is delayed, DURA-LINE may cancel deliveries scheduled during the period of the Force Majeure Event or elect to extend the period of delivery or performance to cover the period of delay caused by the Force Majeure Event. If delivery of any Goods or performance of any Services is delayed for more than 30 days, DURA-LINE may, without liability, cancel all or any part of the purchase order.

For the purpose of these Terms, "**Force Majeure Event**" means acts of God, including (but not limited to) earthquakes, flood, tornado, war, armed conflict, terrorism, pandemic, epidemic, civil unrest or riot. A Force Majeure Event shall not include staff shortages, strikes, staff illness, delayed delivery, unsuitability of materials, raw materials or semi-finished products or services, attributable failures, or wrongful acts on the part of suppliers or third parties engaged by Vendor, restrictions related to Covid-19, liquidity or solvency problems, or similar events. Vendor's ability to sell Goods at a more advantageous price or Vendor's economic hardship in buying materials or processing necessary for manufacture of the Goods shall not constitute a Force Majeure Event.

### 14. Environment, Health and Safety

Vendor will make its best efforts to fulfill the purchase orders in the most environmentally sustainable form at a reasonable and competitive cost.

In order to allow the safe usage of the Goods or the safe provision of the Services, Vendor shall comply with the laws and regulations applicable to the delivery of the Goods or provision of the Services, as well as those requirements that DURA-LINE requests before, during and after the fulfillment of the purchase order.

Vendor shall take all actions necessary to provide a safe, healthy, and secure work environment, including transportation and accommodation, if applicable, for its personnel. Vendor shall properly assess and mitigate any known risks, hazards, or changed conditions impacting worker health, safety, or the environment, including the presence or potential presence of hazardous materials.

Vendor shall provide personal protective equipment to its staff or sub-Vendors, transportation to and from the place where the Services will be rendered and any other specialized equipment that may be required at its own expense.

Vendor will be solely responsible for any damages or consequences that its personnel or sub-Vendors may suffer from exposure to any health and safety risks. Vendor shall indemnify and hold DURA-LINE harmless from any claim from third parties in such regard.

### 15. Hazardous Materials

In the event that the Goods consist of or contain materials or substances classified by applicable law as dangerous or hazardous, Vendor shall fully observe all applicable regulations for proper packaging, handling, transportation, loading, unloading, maintenance, use and storage according to the case. Vendor shall be exclusively responsible for any obligation, loss, damage, or harm arising from, caused by or in relation to the dangerous or hazardous material. Unless otherwise agreed by DURA-LINE in a purchase order, Vendor shall be responsible for verifying that any carrier used for the shipment of Goods also complies with all security and care measures for the handling and transport of the dangerous or hazardous materials according to the applicable regulations.

### 16. Indemnification

Vendor shall indemnify and defend DURA-LINE and its parent and affiliates and their respective owners, directors, officers, employees, agents, representatives, customers, successors and assigns against all claims, actions, judgments, settlements, decrees, liability, damages, losses, penalties, costs and expenses (including actual attorneys' and consultants' fees) that, directly or indirectly, are in connection with, arise out of, or relate to: (a) any act or omission of Vendor, its employees, subcontractors, agents or representatives, (b) the performance of any service (including but not limited to any Services) or work by Vendor or its employees, subcontractors, agents or representatives, or through their presence on DURA-LINE's or DURA-LINE's customers' premises, (c) the use of the property of DURA-LINE or DURA-LINE's customer, (d) the non-performance, late performance, improper performance, or any breach by Vendor or its employees, subcontractors, agents, representatives, or other parties acting on its behalf or at its direction of its representations, warranties or obligations under the purchase order or these Terms, (e) any alleged or actual infringement of trade secrets or intellectual property or other rights of third parties, (f) Vendor-furnished equipment, materials, Goods or Services, or (g) any information, operating instructions, safety information or other information or materials relating to the Goods which were produced or provided by Vendor to DURA-LINE. This clause applies to, among other things, claims for injury to or death of persons (including employees of Vendor, DURA-LINE or third parties) or damage to any property (including property of Vendor, DURA-LINE or third parties), and regardless of whether claims arise under tort, negligence, contract, warranty, strict liability or any other legal theory.

Inspection, acceptance and/or payment by or on behalf of DURA-LINE shall not release Vendor from any obligation or liability.

Except for those liabilities for which it is not possible to exclude or limit liability under applicable law, DURA-LINE's total liability to Vendor (whether in contract, tort (including negligence) or otherwise in connection with or arising from a purchase order shall not exceed the total purchase value of the purchase order at issue. DURA-LINE shall not be liable for, and Vendor agrees not to assert that DURA-LINE is liable for, any of the following: (a) consequential, incidental, indirect, special and punitive damages; (b) recall costs, line shut-down costs, lost or anticipated profits or revenue or cost of capital; (c) finished Products, work-in-process or materials which



Vendor fabricates or procures in amounts that exceed those authorized by DURA-LINE in purchase orders or releases (but excluding forecast quantities); (d) goods or materials that are Vendor's standard stock or that are readily marketable; (e) claims of Vendor's suppliers or other third parties for damages or penalties, and (f) all other losses, damages, liabilities, costs and expenses not expressly set forth in this paragraph.

#### **17. Insurance**

Vendor shall maintain and carry liability insurance in an amount no less than the greater of: (a) the minimum amount required by applicable law, or (b) the following coverages: commercial general liability (including Goods liability or, for Services to be performed, completed operations liability) in a sum no less than \$1 million, worker's risk and compensation in an amount no less than the applicable statutory minimum requirement, and employer's liability in an amount of no less than €2 million. In addition, Vendor is responsible for maintaining an adequate level of insurance to cover any potential losses due to damage to DURA-LINE. All insurance required by this article must cover DURA-LINE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents as additional insureds. DURA-LINE may request proof of such insurance at any time and Vendor must provide evidence of the insurance within ten (10) days showing the coverages and that such coverages begun on or before the commercial relationship between the parties started. Except where prohibited by law, Vendor will require its insurers to waive all rights of recovery or subrogation against DURA-LINE, its subsidiaries, and affiliated companies, and its and their respective officers, directors, shareholders, employees, and agents. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation on or satisfaction of the indemnification obligation in these Terms.

#### **18. Confidentiality**

"Confidential Information" means these Terms, the purchase order and all non-public information, technical data or know-how in whatever form and materials (including samples) concerning the business, products, services and/or activities of DURA-LINE and/or its affiliates disclosed or made available to Vendor in relation to the purchase order, whether orally or in writing, in electronic or other form, and whether or not marked as proprietary or confidential, and any information derived from the Confidential Information; provided that Confidential Information does not include information: (a) known to Vendor at the time of disclosure or rightfully obtained by Vendor on a non-confidential basis from a third party; (b) that is now, or hereafter becomes, through no act or failure to act on the part of Vendor, generally known in the public; or (c) that is independently developed by Vendor without reliance on the Confidential Information as shown by contemporaneous documentary evidence.

Vendor shall not use the Confidential Information except for the purpose of exercising its rights or performing its obligations under the purchase order (the "Purpose"). Vendor shall not disclose the Confidential Information to any third party except its employees and representatives who have a need to know such information for the Purpose and who are bound by confidentiality or nondisclosure obligations at least as stringent as those contained in this agreement. Vendor shall not reverse engineer any Confidential Information, including any samples, without prior written permission of DURA-LINE. Vendor shall take all reasonable, prudent safeguards to prevent the use or disclosure of Confidential

Information in violation hereof. Vendor shall be primarily responsible for the obligations of its employees and agents under this clause. Upon DURA-LINE's request, Vendor shall promptly return all copies, notes, summaries, and the like regarding or based on the Confidential Information, whether written, electronic, or other form, of any such Confidential Information, or delete and destroy Confidential Information in a secure manner. Notwithstanding the foregoing, Vendor may retain one copy of the Confidential Information for records management purposes, or copies in enterprise-wide archival back-up systems so long as such copies are not readily attainable. Notwithstanding the destruction or retention of the Confidential Information in accordance with the foregoing, Vendor shall continue to be bound by its obligations of confidentiality hereunder.

In the event Vendor is required to disclose any Confidential Information by order of a court or any government agency, by law, regulation, judicial or administrative process, Vendor shall: (a) promptly give prior written notice of such disclosure to DURA-LINE, if legally permitted; (b) reasonably cooperate with DURA-LINE, at DURA-LINE's request and expense, to resist or limit such disclosure or to obtain a protective order; and (c) in the absence of a protective order or other remedy, disclose only that portion of the Confidential Information that is legally required to be disclosed in the opinion of counsel and assure that confidential treatment will be accorded the disclosed information.

Following termination or expiry of the purchase order, the obligations of Vendor under these Terms with respect to the Confidential Information will continue in full force and effect as follows: (a) in the case of any Confidential Information that constitutes a trade secret within the meaning of applicable law, for as long as such information remains a trade secret; or (b) in the case of any other Confidential Information or materials, for a term of ten (10) years from the date of disclosure. The Parties acknowledge and agree that a breach of this clause by Vendor will cause irreparable damage to DURA-LINE for which a remedy at law would not be adequate. In the event of breach or threatened breach, DURA-LINE shall be entitled to injunctive relief in any court of competent jurisdiction for any breach or threatened breach of this provision without the requirement of posting bond or proving damages. In addition to the foregoing, DURA-LINE shall be entitled to monetary damages and other remedies permitted under applicable law.

#### **19. Intellectual Property**

Vendor warrants, undertakes and represents to DURA-LINE that it is the legitimate owner or authorized holder of any and all intellectual property rights in the Goods or Services which are the subject of the purchase order and that the supply of the Goods and/or Services to DURA-LINE does not infringe the intellectual property rights of any third party. Intellectual property rights include, but shall not be limited to, trademarks, trade names, logos, designs, symbols, emblems, distinguishing marks, slogans, service marks, copyrights, patents, models, drawings, know-how and related information, whether or not subject to registration or filing ("IP Rights").

DURA-LINE acknowledges that Vendor will be the sole owner (as between the Parties) of all IP Rights in the Goods. Vendor shall (at its own expense) grant or secure the grant of all necessary licenses and permissions of such IP Rights (on a worldwide, perpetual, royalty-free basis) to DURA-LINE to allow DURA-LINE to purchase, use, resell, sub-license and/or exploit the Goods.



Unless otherwise agreed by DURA-LINE in a purchase order, DURA-LINE will be the sole owner of all IP Rights subsisting in any output/materials/deliverables arising from performance of the Services and Vendor assigns all IP Rights in the same to DURA-LINE with full title guarantee. Vendor will notify all details of any such IP Rights to DURA-LINE upon their creation and the assignment in this clause will take effect in relation to such IP Rights from the point of creation.

If DURA-LINE agrees in a purchase order that it will not become the owner of certain IP Rights subsisting in any output/materials/deliverables arising from the performance of the Services, Vendor shall (at its own expense) grant or secure the grant of all necessary licenses and permissions of such IP Rights (on a worldwide, perpetual, royalty-free basis) to DURA-LINE to allow DURA-LINE to use, sub-license and/or exploit such IP Rights.

Vendor acknowledges and agrees that DURA-LINE and/or its licensors are, and will at all times remain, the sole owner(s) of the IP Rights in any materials provided by DURA-LINE to Vendor in connection with the performance of Vendor's obligations under the purchase order and these Terms. Such materials will constitute Confidential Information.

## 20. Data Privacy

Each Party shall comply with all applicable data protection laws. Unless otherwise agreed to by DURA-LINE in a purchase order, neither Vendor nor its subcontractors will process information relating to any identified or identifiable natural persons ("**Personal Data**") for DURA-LINE or on DURA-LINE's behalf. If DURA-LINE agrees in a purchase order to such processing of Personal Data, the Parties shall enter into a separate data processing agreement in respect of Vendor's obligations relating thereto. If DURA-LINE processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with DURA-LINE's Third Party Privacy Notice, available on [www.duraline-europe.com](http://www.duraline-europe.com).

## 21. Independent Vendor

For all purposes of these Terms and in compliance with their obligations under the purchase order, the Parties agree and acknowledge that Vendor is and always will be considered even after the termination of the purchase order, an independent third party. Nothing in these Terms or the purchase order shall be deemed to mean that Vendor is an employee, partner, agent or representative of DURA-LINE.

## 22. Vendor's Special Obligations

For the fulfillment of the purchase order and these Terms, and without prejudice to the other obligations inherent to its execution, Vendor: (i) guarantees that its employees will maintain professional behavior in the facilities of DURA-LINE and comply with all existing rules, regulations and policies; (ii) will comply with the safety standards necessary for the effective fulfillment of the work entrusted to it and abide by the applicable norms for vendors; (iii) acknowledges that the personnel that Vendor uses to deliver the Goods and/or perform the Services will only be able to access the DURA-LINE facilities when they identify themselves as such and will only be able to stay in the authorized areas during authorized times; (iv) agrees Vendor's personnel shall use all necessary and required personal protection equipment; (iv) agrees to use top quality materials and supplies and qualified personnel that comply with the requirements of the purchase order and these Terms.

## 23. Ethics and Compliance

Vendor shall: (a) comply with all applicable laws and regulations relating to anti-bribery and anti-corruption (including without limitation the UK Bribery Act 2010 and the US Foreign and Corrupt Practices Act) and maintain adequate policies and procedures designed to ensure such compliance by itself, its personnel and its subcontractors; (b) promptly report to DURA-LINE any offer, request or demand for any undue financial or other advantage received in connection with the performance of its obligation, and (c) ensure that any person who is providing services or goods to Supplier in connection with the purchase order is subject to anti-bribery and anti-corruption terms equivalent to those in this clause.

Vendor shall fully comply with all applicable export controls ("**Export Controls**"), including, without limitation, the US Export Administration Regulations, 15 C.F.R. § 730, et seq., the US International Traffic in Arms Regulations, 22 C.F.R. § 120, et seq., the US Arms Export Control Act, 22 U.S.C. 2778, the US International Emergency Economic Powers Act, 50 U.S.C. § 1701, the sanctions and embargoes administered by the United States Department of Treasury's Office of Foreign Assets Control, and the EU Council Regulation (428/2009) on dual use products. Vendor shall not undertake or cause to be undertaken any action that would cause DURA-LINE to be in violation of any Export Controls.

Vendor represents and warrants that it has developed and implemented supply chain security practices and procedures that meet the minimum security criteria for foreign manufacturers that US Customs and Border Protection (CBP) has established as part of its Customs Trade Partnership Against Terrorism (CTPAT) program.

Vendor represents and warrants that: (i) it shall comply with the EU Conflict Minerals Regulation (821/2017), (ii) the Goods do not contain conflict materials, as defined in Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act, which would require Vendor to file a Conflict Minerals Report, and (iii) the Goods do not contain any minerals or other resources that if included in the Goods would trigger a violation of US Executive Order 13671.

The Supplier shall comply by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5 (a) and 60-741.5(a) and 29 CFR Section Part 471, Appendix A to Subpart A, if applicable. The Supplier shall (i) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, (ii) prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin, and (iii) take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

The Supplier represents and warrants that (i) it has the right and legal authority to enter into this agreement; (ii) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (iii) it is not a party to or bound by any agreement or instrument or subject to any corporate restrictions or any judgment, order, writ, injunction, decree, law, rule or regulation that now or in the future may materially and adversely affect the ability of the Supplier to perform its obligations under this agreement; (iv) there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board, or body



pending or, to the best of the Supplier's knowledge, threatened against or affecting the Buyer in which an unfavorable decision, ruling, or finding would have a material adverse effect on the Buyer's ability to perform its obligations under this agreement; (v) neither the Supplier nor any of its principals, including but not limited to: officers, directors, owners, or partners, are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded by any state or federal agency; and (vi) in the last ten (10) years, neither the Supplier nor any of its principals have been convicted (including by way of a guilty plea), been investigated, or received a grant of immunity in connection with any business or truthfulness-related act or omission, which constitutes or was alleged to constitute a crime or a felony.

In performing its obligations under the purchase order and these Terms, Vendor shall at all times comply with the Orbia Code of Ethics, available at [www.orbia.com](http://www.orbia.com) and DURA-LINE's Supplier Code of Conduct, as provided to Vendor in writing from time to time.

#### **24. Assignment and Subcontracting**

Vendor shall not assign the purchase order or any rights or obligations under it or subcontract all or any material aspect of its obligations without the prior written approval of DURA-LINE. Any assignment without DURA-LINE's written approval will be voidable at the option of DURA-LINE.

DURA-LINE may assign the purchase order or any of its rights or obligations to any of its subsidiaries or affiliates, or to any purchaser or successor without Vendor's consent and upon written notice to Vendor.

Vendor shall be fully responsible for any performance by third parties in the execution of the purchase order as if this were its own performance. Vendor guarantees that sub-contractors and third parties will comply with the purchase order, these Terms and all other regulations and provisions declared applicable by DURA-LINE.

#### **25. Amendments and Modifications**

DURA-LINE shall be entitled to amend the scope and nature of the Goods or Services to be delivered within reasonable margins. Vendor must report the amendments necessary to that end promptly, and in any case within five (5) working days of the request, to DURA-LINE in writing. In addition, Vendor undertakes to execute without delay the amendments required by DURA-LINE, for example in drawings, models, instructions, specifications, and activities, even if no agreement was reached about the additional costs, if any.

If, in Vendor's reasonable opinion, an amendment referred to in this article affects the agreed price and/or the delivery times, Vendor, before making the amendment, shall inform DURA-LINE of this in writing as soon as possible, but in all cases within five (5) working days of the request. If DURA-LINE considers these effects on the price, the activities or delivery times reported by Vendor to be unreasonable, DURA-LINE shall have the right to revoke the amendment or to terminate the purchase order. If the purchase order is terminated, DURA-LINE shall reimburse Vendor for the reasonable, evidenced, unavoidable costs incurred by Vendor in relation to such purchase order (or relevant part of it) up until the date on which such notice was received not to exceed the aggregate purchase price of the Goods or Services under such

purchase order.

No change to or modification of the purchase order will be binding upon DURA-LINE unless in writing, specifically identifying that it amends the purchase order, and signed, or approved electronically, by an authorized representative of DURA-LINE. If Vendor becomes aware of any ambiguities, issues, or discrepancies between the purchase order and any specification, design, or other technical requirement applicable to the purchase order, Vendor will immediately submit the matter to DURA-LINE for resolution.

#### **26. Audit**

Vendor shall keep proper, accurate and up to date records and data relating to the performance of its obligations under the purchase order. Vendor shall retain such records and data for a minimum of six years after the termination or expiry of the purchase order for any reason.

Vendor shall, on reasonable notice and subject to DURA-LINE or its representatives undertaking appropriate obligations of confidentiality, permit DURA-LINE or representatives appointed by DURA-LINE to inspect and take copies of the records and data referred to in this clause, or any location in which the Goods are being manufactured and/or the Services are being performed, in order to audit and evaluate Vendor's performance of its obligations under and compliance with the purchase order and these Terms.

The audit referred to in this clause shall be conducted at DURA-LINE's cost unless such audit identifies a breach of the purchase order or these Terms by Vendor or that DURA-LINE has been overcharged for the Goods/Services, in which case DURA-LINE (without prejudice to any other right or remedy which it may have) shall be entitled to invoice Vendor and Vendor shall pay DURA-LINE immediately for the costs of such audit and any overcharged amounts.

#### **27. Governing Law**

These Terms and the purchase order shall be governed by and construed in accordance with the laws of Ontario, Canada, without reference to its conflict of laws provisions. The Parties irrevocably submit to the exclusive jurisdiction of the courts of Toronto, Ontario in respect of all matters and disputes in connection with or arising from these Terms and the purchase order. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement

**EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THE PURCHASE ORDER AND THESE TERMS.**

#### **28. Miscellaneous**

All DURA-LINE remedies set forth in the purchase order are in addition to, and will in no way limit, any other rights and remedies that may be available to DURA-LINE at law or in equity.

The Parties agree that any notification related to the purchase order and these Terms will be delivered to the addresses (including





electronic addresses) in the purchase order. The Parties must promptly notify each other of any change of address or email. In the absence of such notice, the notification delivered to the last addresses or e-mails agreed or notified will be considered valid.

The Parties agree that there was no error, fraud, bad faith, physical or moral duress, or any other defect of consent between the Parties that could invalidate or annul agreeing to these Terms. The Parties agree that these Terms shall be construed as if drafted jointly by the Parties and no provision in these Terms or the purchase order shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

Vendor shall not issue any news release, public announcement, advertisement, publicity, or any other disclosure concerning the Goods and/or Services to any third party without the prior written approval of DURA-LINE.

The Parties expressly acknowledge that these Terms and the relevant purchase order constitute the only agreement between them, replacing any previous agreement that the Parties had on the same subject matter, and prevails over any term or condition of Vendor. In the event of any conflict or inconsistency between these Terms and the provisions of the purchase order, the purchase order shall prevail.

DURA-LINE may provide translated versions of these Terms and/or the purchase order for informational purposes only. The original English language version will apply in the event of any disagreement over the meaning or construction of any provisions.

The Parties agree that the headings used throughout these Terms are solely for convenience purposes. At no time will they constrain, expand, or serve as a source of interpretation of the content of each article.

No waiver under the purchase order or these Terms is effective unless it is in writing and signed by the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. Failure of either party to exercise at any time any of its rights under the purchase order or these Terms will not be construed to be a waiver of those rights, nor will any such failure prejudice the right of the Party to take any action in the future to enforce any provision. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from the purchase order or these Terms: (a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under a purchase order and these Terms; or (b) any act, omission or course of dealing between the Parties. In the event any provision of these Terms is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause, and provision to the extent not held invalid or unenforceable.

All provisions of the purchase order and these Terms which by their nature should apply beyond its term will remain in force after any termination or expiration of the purchase order.