

# General Purchase Conditions



These terms and conditions shall apply to the purchase order (the "Purchase Order") to which they are attached (the Purchase Order and these terms and conditions are referred to together as this "Agreement"), notwithstanding any different conditions that may be contained on Vendor's quotation or acknowledgement of the Purchase Order. If all of these terms and conditions are not acceptable to Vendor (as such term is defined in the Purchase Order) it must immediately notify the ordering Voith entity ("Voith") of its objections in writing within five (5) days of receipt hereof; if Vendor fails to so object, it shall be deemed to accept, and hereby waives its right to further object to, these terms and conditions. If there is any conflict between Voith's Purchase Order and these terms and conditions, the Purchase Order shall prevail. **Acceptance of the Purchase Order includes acceptance of these terms and conditions. Neither the Purchase Order nor these terms and conditions may be modified without Voith's written consent.** Vendor's commencement of work or shipment of goods shall constitute acceptance of this Agreement. The offer represented by this Agreement shall terminate if not accepted by Vendor within sixty (60) days of receipt or if rescinded by Voith prior to Vendor's acceptance.

**1. PRICES AND PAYMENT TERMS; SECURITY.** The prices on the face of the Purchase Order may not be increased without the prior written approval of Voith. Unless otherwise provided, the prices include all applicable federal, state and local taxes. Payment terms shall be net sixty (60) days after Voith's receipt of the last to occur of the following: (1) compliant goods or the proper performance of services required under the Purchase Order, (2) complete required documentation or (3) a detailed and correct invoice, unless otherwise agreed to by the parties in writing. A detailed invoice must include, as applicable, purchase order numbers, item numbers, quantities delivered and such other information required by the Purchase Order. Vendor certifies the amounts invoiced hereunder will not exceed the maximum levels established under any applicable government price control program. Any amounts in excess of such maximum levels shall be refunded immediately. Voith may withhold payment due to: (a) defective, deficient, or nonconforming goods or services provided by Vendor under the Purchase Order or any other order; (b) claims against Voith or third parties, or reasonable evidence indicating that such claims have been or will be asserted, in any way relating to or arising out of the goods or services provided or to be provided by Vendor under the Purchase Order or any other order; (c) Voith's reasonable doubt that Vendor can complete the Purchase Order in the time required and for the price stated; (d) damage caused by Vendor or any of its sub-suppliers or sub-contractors under the Purchase Order or any other order; (e) any breach of or default under the Purchase Order or any other order by Vendor; (f) Vendor's failure to provide Voith any requested documents or information, such as, but not limited to, proof of required insurance, lien/claim waivers, material certifications, welding certificates, safety documentation, warranties, test results, inspection reports, shipping documents, compliance statements, or any other document requested by Voith at any time in connection with the Purchase Order. At any time, Voith may require Vendor to provide security satisfactory to Voith to ensure Vendor's performance of the Purchase Order and Vendor shall immediately comply with all such requirements. Such security may include, but is not limited to, letters of credit, parent company guarantees, and bank guarantees. Voith may also withhold up to 20% of any invoice, as retention; such retention to be released upon the later to occur of: thirty (30) days after final completion; and, a final release provided by Vendor to Voith in form and substance acceptable to Voith.

**2. SHIPPING AND PACKAGING.** Shipping terms shall be FCA Vendor's facility, in accordance with INCOTERMS 2010, unless otherwise stated on the face of the Purchase Order. All bills of lading, packing lists and other shipping documents must be provided to Voith. No charges for cartage, blocking, packing, drayage, demurrage, boxing or crating will be allowed unless agreed to in writing by Voith. All shipments must be adequately boxed or crated with any special handling instructions clearly marked and the contents protected to prevent damage in transit and, in the case of export shipments, must be waterproofed and packaged to meet all export requirements and standards. Voith's purchase order number must appear conspicuously on each package, box, crate or other type of container. Packaging must meet any applicable sanitary and phyto-sanitary requirements of the country of destination and transit. Material for two or more Voith locations must be packaged separately and marked accordingly. Local and warehouse shipments of steel and bar stock shall be marked or tagged in a manner sufficient to permit prompt identification upon receipt. Shipping documents in duplicate and a separate invoice in triplicate for each shipment must be mailed to Voith. When material is invoiced by Vendor but shipped by another entity, the invoice shall bear the name of the shipper and the point from which shipment originated. All shipments must contain packing lists giving description of material quantity and Purchase Order number. Shipments shall be routed as requested by Voith.

**3. TERMINATION AND MODIFICATION FOR CONVENIENCE; CHANGES; CLAIMS.** Voith may terminate or suspend work under this Agreement in whole or in part at any time by giving written notice (including in electronic form) to Vendor of such termination or suspension. In the event of termination, if Vendor is not then in default, Vendor shall immediately stop all work. Voith shall pay Vendor for actual direct material and labor costs incurred by Vendor up to the time of such termination. In the event of suspension, and if Vendor is not then in default, Vendor shall immediately stop all work. Vendor shall immediately resume such work upon notice from Voith. At such time of

resumption of work, Vendor shall notify Voith of its actual direct costs incurred as a result of such suspension, and Voith shall pay Vendor for such costs. In each case, Vendor shall use its best efforts to mitigate the costs incurred. Additionally, Voith may, at any time, make changes, additions, or subtractions ("change(s)") to the scope of work required under the Purchase Order, which changes may include, but are not limited to, change in drawings, specifications, quantities, delivery or performance schedules, places of delivery or methods of shipment or packaging, or any other change, and Vendor shall comply with such changes. Vendor must assert claims for equitable adjustment of price and delivery or performance schedule within five (5) days of receiving notice of a change (or sooner if required by Voith) or of any event giving rise to a claim for equitable adjustment. If Voith requires that a change is executed under a particular payment method (e.g., lump sum or cost plus), Vendor shall present its claim for adjustment according to such method and provide Voith with all substantiating information requested by Voith. If Vendor fails to so assert its claim within such five (5) day (or sooner) period, Vendor waives its right to make such claim. Voith may, at its option, terminate this Agreement in accordance with this section if the parties cannot agree on an equitable adjustment within a reasonable time. Except as set forth in this section, no modifications or terminations of this Agreement may be made without Voith's written agreement.

**4. TITLE, RISK OF LOSS AND INSPECTION.** Title to any goods covered by this Agreement shall immediately pass to Voith upon the earlier of (i) delivery or (ii) Voith's full payment for such goods. Possession of and risk of loss of any goods covered by this Agreement shall pass to Voith upon delivery at Voith's designated facility. All work and goods are subject to inspection at the discretion of Voith and/or its authorized representatives (which may include a third-party inspection company or Voith's customer). Vendor shall provide reasonable access to its facilities at any time during business hours and shall supply assistance, tools, etc., as may be required to carry out inspection in Vendor's and/or its sub-vendors' (which shall include subcontractors' and sub-vendors') plants. Voith may require certain testing, at its sole discretion, as a part of the inspections. Any inspection or testing performed shall not be deemed to constitute acceptance of the goods or related work and shall not be deemed to constitute a waiver of any of Vendor's contractual obligations. In case of any deficiency in the goods or services, Voith may require Vendor to rectify such deficiency at any time by notice to Vendor. Vendor shall rectify the deficiencies at its own cost, upon demand, and without impacting the schedule, all to Voith's satisfaction. If Vendor fails to do so, Voith may perform the corrections, or have them corrected on Vendor's behalf at Vendor's cost. Any additional expenses (including, but not limited to, costs for personnel, travel expenses and shipping costs for returned goods) incurred by Voith and/or its representatives due to deficiencies, errors or omissions by Vendor and/or its sub-vendors) and/or any other reason attributable to Vendor and/or its sub-vendor(s) will be Vendor's responsibility. The terms of this section shall apply notwithstanding any contradictory Incoterms set forth in this Agreement.

**5. WARRANTY.** Vendor warrants the goods, articles and services furnished hereunder (whether materials, parts or equipment) to be (1) as specified, (2) free and clear of all liens or other security interests and encumbrances, good, valid and marketable title thereto being solely in Vendor, (3) made exclusively of new materials, (4) free of defects of any type (whether in design, material, workmanship or otherwise), (5) of good and merchantable quality and (6) fit for the intended and general purposes for which Voith is purchasing them. Unless a longer time is set forth on the face of the Purchase Order, such goods or services warranty shall last for the longer of 36 months from the first date of operation of the goods or 48 months from the date of shipment of the goods or completion of the services. If any such goods, articles or services are found to be in breach of any of the foregoing warranties, Vendor shall at its sole cost promptly, at Voith's option, either (1) replace the goods or articles, DDP named destination of Voith, in accordance with INCOTERMS 2010, (2) repair the goods or articles or (3) re-perform the services found to be defective. Vendor shall be responsible for all costs arising out of the breach of warranty and repair, replacement or re-performance, including, but limited to, disassembly, reassembly, transportation, installation, storage, commissioning and re-testing. If Vendor fails to promptly replace or repair the goods or articles or re-perform the services, Voith may have the articles repaired or replaced or the services re-performed by Voith or a third party at Vendor's expense. Repairs, replaced goods and articles and re-performed services shall be warranted in accordance with the terms of this Agreement. If repair, replacement or re-performance is not possible, Voith may terminate the Purchase Order and Vendor shall refund Voith the full purchase price and be liable for all direct and indirect expenses, costs and damages incurred by Voith. The foregoing and all other, legal, statutory, express and implied warranties that can have application to the goods, articles and services furnished hereunder shall be deemed conditions of this order and the remedies provided in this paragraph shall be cumulative and in addition to any other or further remedies Voith may have, including under applicable law. The warranties and remedies provided for in this paragraph shall inure to the benefit of Voith, its successors, assigns and customers and to the users of its products and Voith's inspection, approval, acceptance of and/or payment for goods, articles or services or any drawings do not relieve Vendor of the warranties provided herein.

**6. INDEMNIFICATION.** Vendor assumes responsibility for and shall indemnify, defend and hold Voith and Voith's successors, assigns, customers, directors, officers, employees, shareholders, advisors, representatives and agents harmless from and against any and all claims, demands, suits, judgments, actions, proceedings, liability,

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losses, damages and expenses including fees, expenses and costs, whether or not involving a third party claim, that, in whole or in part, is caused by, relates to or arises out of Vendor's performance (or non-performance) of the obligations under this Agreement or the misconduct or negligent act or omission of Vendor or its employees, agents and representatives in connection with or relating to this Agreement and the goods and/or services ordered hereunder.

**7. SOFTWARE.** Vendor shall provide Voith the right to use any and all software that is part of the scope of delivery, including, without limitation, the documentation for such software. Voith shall have the right to pass such right to its customers when required to do so by contract. Before the software is shipped or installed on a system of Voith or its customers, Vendor shall check the software for viruses, Trojans and other computer malware using up-to-date, customary anti-virus programs.

**8. INTELLECTUAL PROPERTY INDEMNIFICATION.** Vendor shall indemnify and hold harmless Voith and Voith's successors, assigns, customers, directors, officers, employees, shareholders, advisors, representatives and agents against all losses, damages, liability, claims, demands, suits, judgments, proceedings and actions, whether or not involving a third party claim, for actual or alleged infringement of any letters patent, trademarks or corresponding rights, because of the sale or use of any goods or articles specified in this Agreement except those which have been specifically and solely designed by Voith. Vendor shall have the right, with Voith's assistance if required, to conduct settlement negotiations or the defense of any litigation involving a third party originating from such alleged infringement, and Vendor shall pay all judgments, damages, fees, costs or expenses awarded against or incurred by Voith. If all or any materials, parts or equipment are alleged or held to infringe a patent and the use thereof is enjoined or Voith deems the continued use thereof inadvisable, Vendor shall, at its expense, procure for Voith the right to continue the use of such part of the materials, parts or equipment, or replace or modify the same with non-infringing materials, parts or equipment maintaining the original performance characteristics of the materials, parts or equipment.

**9. TOOLS.** If the price charged includes the cost of any tools, designs, patterns, dies, jigs, fixtures, special machines, drawings or the like, acquired for the specific purpose of filling this order, such tools, designs, patterns, dies, jigs, fixtures, special machines, drawings or the like, shall be the property of Voith. They shall be maintained, at the expense of Vendor, in suitable condition to perform the work and shall, at Vendor's expense, be returned to Voith or disposed of as Voith shall direct. No designs, tools, patterns, dies, jigs, fixtures, special machines, drawings or the like supplied by Voith shall be used for the manufacture of any goods or articles other than the goods or articles and the quantity actually specified herein without Voith's consent.

**10. VOITH MATERIAL.** All material provided by Voith to Vendor on a "no-charge" basis, if any, including scrap, shall remain the property of Voith and be fully accounted for. All such material scrapped because of defective workmanship of Vendor or its subcontractors shall be replaced or paid for by Vendor.

**11. DELIVERY.** Vendor shall deliver by the date(s) specified on the Purchase Order. Time is of the essence for all shipments and performance of services under this Agreement. If at any time, Voith determines that the schedule is not being met or is at risk due to an act, error, or omission of Vendor, or Vendor is not taking reasonable steps to remedy any delays, without prejudice to any other rights or remedies, Voith may deliver written notice (including in electronic form) to Vendor directing Vendor to accelerate the performance of the order. Vendor shall comply with such directive at its sole cost and expense until performance is back into conformity with the schedule and Purchase Order requirements. If delivery is delayed beyond the specified delivery date, Voith shall have the right to cancel the unfilled portion of the Purchase Order without obligation to Vendor and Voith shall have the right to place the unfilled portion of the Purchase Order with another supplier or suppliers, and any resulting costs or consequent increase in cost to Voith shall be paid by Vendor. Unless otherwise agreed to by Voith in writing, shipments made more than thirty (30) days early may be rejected and returned by Voith at Vendor's cost and expense, and Vendor shall remain required to deliver the shipments as required by this Agreement. Such rejection and return of a shipment by Voith shall not constitute a waiver of any of Voith's rights, including, without limitation, its rights under this Agreement or applicable laws. Voith shall not be required to accept delivery of any excess quantities unless otherwise agreed in writing.

**12. QUALITY.** Vendor shall ensure the quality of its goods and services through the implementation of an adequate quality assurance system, such as ISO 9001, ISO 9002 or similar, completing quality checks and tests required by Voith and taking such other actions as are appropriate for the goods and services covered by this Agreement. Vendor shall keep records of any and all such quality checks and tests performed and maintain such records for a period of ten (10) years. Voith shall be entitled to require proof of Vendor's quality assurance system as necessary to satisfy Voith that the quality tests and checks are carried out, including, without limitation, through conducting audits at Vendor's and subcontractors' facilities and of its books and records. Vendor shall immediately inform Voith of changes in the composition or design of the goods and services covered by this Agreement. Such changes shall require the written consent of Voith. No audit or inspection by Voith (nor Voith's option not to audit or inspect) shall

relieve Vendor of any of its responsibilities under the Purchase Order, including but not limited to its obligations to the QA/QC work.

**13. CONFIDENTIAL INFORMATION.** In addition to any signed confidentiality agreement between the parties, and except as may be required by law or court order or as necessary in connection with the operation, repair, maintenance and modification of materials, parts and equipment, Vendor agrees to keep and maintain confidential any and all proprietary information obtained by Vendor from Voith or in connection with this Agreement, including, without limitation, all information on the face of the Purchase Order and to not make use of such information, without the prior written consent of Voith, except in connection with this Agreement. Such information shall not be disclosed to any third party without the previous written consent of Voith.

**14. CORPORATE RESPONSIBILITY; COMPLIANCE WITH LAWS.** Vendor acknowledges it is committed to corporate responsibility and Vendor agrees it shall comply with the requirements of all applicable federal, state and local laws, statutes, rules, regulations and orders and the principles contained in the Voith Group Code of Conduct, available at <http://voith.com/en/coc-english.pdf>. Vendor shall hold Voith and its successors, assigns, customers, directors, officers, employees, shareholders, advisors and agents harmless from and indemnify them for any and all losses and damages, whether or not involving a third party claim, resulting from Vendor's violation of the provisions of any such laws, statutes, rules, regulations and orders, including, without limitation, those relating to labor, wages, hours and other conditions of employment and laws relating to prices and unfair competition. Upon accepting Voith's order, Vendor further confirms it shall not commit or tolerate any form of bribery and/or corruption, and Vendor shall comply with all applicable anti-bribery and anti-corruption laws, statutes, regulations and codes, including, without limitation, the U.S. Foreign Corrupt Practices Act, the Canada Corruption of Foreign Public Officials Act and the U.K. Bribery Act 2010. Under no circumstances shall Vendor directly or indirectly pay bribes or kickbacks or provide other personal benefits to any employee or agent of Voith.

**15. EXPORT CONTROL.** If requested by Voith, Vendor must submit a supplier's declaration to satisfy applicable legal requirements regarding the export of the goods or any other information requested by Voith, including, but not limited to, country of origin and the export control classification number (ECCN) or other applicable classification designation of an item. Vendor must inform Voith of any approvals required or restrictions for the export or re-export of such goods under applicable export or customs laws, rules and regulations. If the above information is not provided or provided incorrectly, in addition to any and all other remedies available to Voith under these terms or the law, Voith may terminate the Purchase Order for cause. Vendor shall indemnify Voith for any and all costs, damages, losses, fines, penalties, and expenses (including legal fees and costs) arising from such information.

**16. SAFETY; PROTECTION OF THE ENVIRONMENT; HAZARDOUS MATERIALS; CONFLICT MINERALS.** Vendor shall ensure its goods and services meet all applicable environmental protection, security, accident prevention and work safety regulations in effect in order to avoid or reduce harmful impacts on individuals and the environment.

Vendor must comply with all applicable laws, rules, regulations, policies, orders or directives on the disposal of waste and recycling material and notify Voith of any product handling, product storage and disposal requirements that apply to the goods covered by this Agreement.

If applicable, Vendor will provide Voith with all appropriate Material Safety Data Sheets in English (or such other language as Voith may request) at the time of delivery of each shipment of goods or services that require such compliance, and updates of the same. Vendor shall in no case supply anything containing asbestos, biocides, or radioactive material, unless Vendor first obtains Voith's prior written approval, and any additional required instructions or terms from Voith. If Vendor uses chemicals, PCBs or any potentially hazardous materials, Vendor assumes responsibility for and will indemnify, defend and hold Voith and its successors, assigns, customers, directors, officers, employees, shareholders, advisors and agents harmless from and against any and all claims, damages, losses, liability and expenses (including legal fees and litigation expenses), whether or not involving a third party claim, arising out of Vendor's use thereof (including the unloading, discharge, storage, handling or disposal of any chemical or container therefore) and for Vendor's noncompliance with any related laws, rules, regulations, policies, orders or directives.

Supplier shall implement appropriate and good faith measures in its organization and its supply chain to work towards ensuring that the products to be supplied to Voith do not contain conflict minerals as defined by Sections 1502 and 1504 of the Dodd-Frank Act (as such Act may be amended from time to time), such minerals including, but not limited to, columbite-tantalite (coltan), tin, wolframite, gold, and their derivatives, originating from the Democratic Republic of Congo and its neighboring states.

**17. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW: (A) VOITH SHALL NOT BE LIABLE TO VENDOR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, CONTINGENT OR INCIDENTAL, EXEMPLARY OR

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PUNITIVE DAMAGES; LOSS OF PROFIT OR REVENUE; LOSS OF USE OF GOODS OR EQUIPMENT; DAMAGE TO ASSOCIATED GOODS, DATA OR EQUIPMENT; COST OF CAPITAL; OR OTHER TYPES OF ECONOMIC LOSSES, ALL IRRESPECTIVE OF WHETHER SUCH DAMAGES, LOSSES OR COSTS CONSTITUTE DIRECT OR CONSEQUENTIAL DAMAGES AND WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE; AND (B) IN NO EVENT SHALL VOITH'S AGGREGATE LIABILITY TO VENDOR EXCEED THE PURCHASE PRICE STATED ON THE PURCHASE ORDER.

**18. INSURANCE.** Prior to commencing work, Vendor shall obtain and maintain for the entire duration of the contract insurance coverage that fully meets and is in compliance with Voith's requirements as set forth on attached Exhibit A. Vendor shall provide Voith with a Certificate of Insurance and endorsements or policy forms in compliance with Voith's requirements. Vendor shall require its insurance carrier(s) to give Voith at least thirty (30) days written notice prior to cancellation or nonrenewal of coverage and waive rights of subrogation against Voith and its affiliates.

**19. SUBCONTRACTING.** Vendor shall not sublet, subcontract or sub-supply any portion of the Purchase Order without Voith's prior, written consent, which consent may be withheld, conditioned, revoked, or delayed in Voith's absolute discretion at any time. Vendor shall remain fully responsible and liable for the acts and omissions of any of its sub-vendors and of any persons employed by any of them, and Vendor shall not be relieved from any responsibility for the portion of the order that is sublet, subcontracted or sub-supplied. Nothing contained in this Agreement shall create any contractual relationship between Voith and the sub-vendors. Vendor shall provide an unpriced copy of all Purchase Orders and contracts for work or articles that are sublet, subcontracted or sub-supplied. Voith shall have the right to expedite and inspect all such work and the production of such goods and articles as though they were being performed by Vendor. Vendor's subcontractors and suppliers of all tiers must obtain written permission from an authorized representative of Voith prior to mobilization to or demobilization from all Voith project sites, if applicable.

**20. EXPEDITING.** This Agreement is subject to expediting by Voith and/or its authorized representative, and expeditors shall be allowed free access to all phases of manufacture and supply, including, without limitation, shipping details. Upon notice, Vendor shall promptly provide Voith's expeditor with the name of a plant contact, plant reference number, scheduled holidays and shut-down periods, plant capacities and current workload, numbers of Vendor's personnel qualified in various disciplines having to do with execution of this Agreement and any other pertinent information. Voith's expeditor will monitor the timely preparation of and Vendor's actual adherence to the schedule covering activities in engineering, issuance of drawings and data, material acquisition, fabrication, assembly, inspection, testing and shipping. Notification of readiness for inspection and/or testing shall be given in writing to Voith. If requested by Voith, Vendor shall make available at its cost working facilities for a resident expeditor from Voith, including, but not limited to, office space, telephone, computer, etc.

**21. DEFAULT.** If (1) Vendor becomes insolvent, (2) Vendor files a voluntary petition under any bankruptcy or insolvency law, (3) a petition is filed against Vendor under any bankruptcy or insolvency law, (4) Vendor makes an assignment for the benefit of creditors, (5) Vendor fails to deliver in accordance with this Agreement goods Voith has paid for, (6) Vendor comes under the controlling influence of a competitor of Voith; or (7) Vendor breaches any provision of these terms or the Order (each, a default), Voith shall have the right to: terminate all or any portion of this Agreement for default, require satisfactory assurances of performance, take over all or any portion of the work itself or assign it to a third party at Vendor's cost, withhold all further payments until the work is complete, and/or exercise or demand any and all other rights and remedies available under this Agreement or the law, all such rights and remedies being cumulative and without prejudice to any other right or remedy. Upon a default, Voith shall retain title to all of Voith's property and goods Voith has paid for, and Vendor irrevocably grants Voith the right to enter and access Vendor's facilities to remove such property and paid-for goods. If a court of competent jurisdiction subsequently determines that Voith's termination under this section was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience as set forth in section 3 and Vendor shall have the rights under that provision, but no other rights or claims for damages.

**22. LIENS ON THIRD-PARTY PROPERTY.** This Agreement may involve goods and services that Voith will resell to one or more third-party customer of Voith. Vendor is not a third-party beneficiary of any agreements between Voith and its customers. To the extent permitted by applicable laws, Vendor waives its rights, if any, and shall require any subvendors to waive their rights, if any, to file, take, or register any security interest, charge, hypothec, mechanics' lien or similar liens ("liens") against the real or personal property of any and all such third-party customers of Voith. If Vendor (or any subvendor) files, takes, or registers any such liens, Vendor shall immediately discharge and release such lien and execute releases (including obtaining any such discharge and release from any subvendor) promptly upon Voith's request. If at any time Vendor fails to promptly provide any discharge and release as requested by Voith, Voith may hold back payments due from Voith until Vendor has provided such discharge and release.

**23. USE OF VOITH NAME AND MARKS; PUBLICITY.** Vendor agrees Voith's name, trademarks, trade names, distinctive markings and decorative markings are the sole property of Voith and shall not be used by Vendor except on goods purchased by Voith from Vendor. Vendor shall not publicize or advertise its business relationship with Voith or work performed for Voith without Voith's prior written consent.

**24. CERTIFICATE OF ORIGIN.** If requested by Voith, Vendor shall promptly provide Voith with a completed NAFTA Certificate of Origin and such other documentation as Voith may request certifying the origin of the goods covered by this Agreement.

**25. GOVERNING LAW.** This order and all matters arising hereunder shall be governed by the laws of the state of Delaware, without regard to conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and the sale of goods made hereunder.

**26. DISPUTE RESOLUTION.** Any dispute arising under or relating to this Agreement that cannot be resolved within a reasonable amount of time by good faith negotiations shall be finally resolved by binding arbitration. Such arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed pursuant to such rules. The arbitration shall be conducted in the English language and occur in the city where Voith is located or at such other location as may be agreed to by the parties. The arbitrator's ruling shall be set forth in writing and be final and binding on the parties.

**27. LANGUAGE.** This Agreement and all other agreements, notices and other agreements required in connection with this Agreement shall be in the English language.

**28. INVALIDATION AND NON-WAIVER.** In the event that any portion of this Agreement or its terms and conditions are rendered invalid by a court of law, the remainder of the Agreement shall be and remain valid, binding, and fully enforceable. Failure by Voith to insist upon strict performance of any term of this Agreement shall not constitute a waiver of any of the terms of this Agreement or of any default.

**29. COMMUNICATIONS.** Any notices to be given under this Agreement shall be made in writing and mailed to Voith or Vendor at the address listed on the Purchase Order. Electronic communications are acceptable and constitute a writing under this Agreement.

**30. CONTRACTOR STATUS.** It is understood and agreed that Vendor shall perform under this Agreement as an independent contractor and not as an agent, representative or employee of Voith.

**31. ASSIGNMENT.** Neither this Agreement nor any monies due hereunder may be assigned without Voith's prior written consent.

**32. DOCUMENT RETENTION.** Vendor shall retain, and shall require its subvendors to retain, all project documentation, including but not limited to all records, reports, drawings, results, correspondence, invoices, and notices, for no less than seven (7) years from the end of the warranty of all goods and services provided under the Purchase Order.

**33. SITE WORK OR INSTALLATION.** The following provisions apply to work performed by Vendor at locations controlled by Voith or Voith's customer or end user (the "Site"):

- a. Vendor shall maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. Vendor shall employ only competent, skilled, reliable, and honest workers who will work in harmony with other workers on the Site. All persons provided by Vendor shall be deemed Vendor's employees or agents, and Vendor shall comply with all applicable statutes regarding worker compensation, employer liability, minimum wage, unemployment compensation, and/or elderly benefits and all other applicable laws relating to or affecting the employment of labor. Vendor shall follow all Site rules as directed by Voith, the Site Owner, or appropriate persons. At the Site Owner's or Voith's instruction, Vendor shall promptly remove from the Site any employee who, in Site Owner's or Voith's opinion, represents a threat to the safety or progress of the project or persons on the Site, or who has engaged in any improper conduct.
- b. Vendor shall secure all materials and the area where its work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth elsewhere in the Agreement) and in a safe condition at the end of each work day and upon completion of the work. The Site Owner or Voith may remove Vendor's waste at Vendor's expense.
- c. If Vendor: (i) fails to supply the proper amount of labor, materials, equipment, supervision, skilled labor, or quantities to meet the requirements of the Agreement; (ii) causes stoppage or delay of or interference with the project or any other work at the Site; (iii) fails to promptly pay its employees or its sub-tier contractors, suppliers, or vendors, including but not limited to any worker compensation, minimum wage, unemployment or other benefits, taxes, or withholdings; or (iv) otherwise fails in the performance or compliance of any of the provisions of the Agreement; then Vendor is in default. Upon any default, Voith may exercise any remedy available to it under the Order and the law, including but not limited to terminating the Order under Section 21

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above. Voith may also or instead, after twenty four (24) hours written notice to Vendor, remedy the default on its own, including but not limited to performing or supplying any portion of the work or materials, take possession of the work and materials, equipment, facilities, and tools of Vendor, and/or require Vendor to work overtime and/or provide additional labor, or otherwise remedy the default by whatever means Voith, in its sole and absolute discretion, deems reasonable and appropriate. Vendor shall be liable for any and all cost, damages, penalties, fines, losses, and fees, including but not limited to attorney fees and costs that Voith incurs, directly or indirectly, as a result of Voith's exercise of its remedies in this section.

d. If Vendor or any of its employees, agents, suppliers, or sub-tier contractors utilize any machinery, equipment, tools, scaffolding, hoist lifts, or similar items belonging to Voith ("Voith Equipment"), Vendor shall defend, hold harmless, and indemnify Voith for any loss or damage to Voith's Equipment and/or which may arise from Vendor's use of Voith Equipment (including personal injury or death). Vendor accepts any such Voith Equipment in its as-is, where-is, with all faults condition. Voith does not provide any warranties, whether express or implied, for Voith Equipment condition, use, title, design, operation, merchantability or fitness for a particular purpose, all such warranties being expressly disclaimed and denied. Voith does not warrant that Voith Equipment is safe to use or is free from defects, latent or otherwise. All risk of use is expressly assumed by Vendor.

## EXHIBIT A

### INSURANCE REQUIREMENTS

The Vendor shall not commence work under this Agreement until the Vendor has obtained all insurance required under this Exhibit A and such insurance has been approved by Voith, nor shall the Vendor allow any of its subcontractors performing work related to this Agreement (each, a "Subcontractor") to commence work until all similar insurance required of the Subcontractor has been obtained and approved.

It is hereby agreed and understood that the insurance required by Voith is primary coverage and that any insurance or self-insurance maintained by Voith or its affiliates, directors, officers, agents, or employees will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the Agreement or listed below whichever is longer.

#### I. INSURANCE REQUIREMENTS FOR VENDOR

- A. Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

1. Each Occurrence limit		\$1,000,000
2. Personal and Advertising Injury limit		\$1,000,000
3. General aggregate limit (other than Products-Completed Operations)	<b>per project</b>	\$1,000,000
4. Products-Completed Operations aggregate		\$1,000,000
5. Fire Damage limit – any one fire		\$ 50,000
6. Medical Expense limit – any one person		\$ 5,000
7. Products – Completed Operations coverage must be carried for <b>two years</b> after completion of work		

- B. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1 – "Any Auto" basis.
- C. Workers' Compensation and Employers Liability insurance with sufficient limits to meet state requirements. If applicable for the work, coverage must include Maritime (Jones Act) or Longshoremen's and Harbor Workers Act coverage.
- D. Umbrella Liability providing coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.

#### II. INSURANCE REQUIREMENTS FOR VENDOR'S SUBCONTRACTORS

Each of Vendor's Subcontractors shall be required to obtain Commercial General Liability, Automobile Liability, Workers' Compensation and Employers Liability insurance. This insurance shall be as broad and with the same limits as those required per Vendor requirements contained in Section I above.

#### III. APPLICABLE TO VENDOR AND ITS SUBCONTRACTORS

- A. Acceptability of Insurers. Insurance is to be placed with insurers who have an *A. M. Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state or province in which work is being performed.
- B. Voith and its affiliates, subsidiaries, directors, officers, agents and employees shall be named as additional insureds on all Liability policies for liability arising out of project work, including ongoing and completed operations coverage equivalent to GC 2010 (07/04) and CG 2037 (07/04).
- C. Certificates of Insurance acceptable to Voith shall be submitted prior to commencement of the work. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least 30 days' prior written notice has been given to Voith.
- D. All insurance policies required hereunder shall include waivers of subrogation in favor of Voith and its affiliates.