

## GENERAL CONDITIONS OF PURCHASE

### 1. DEFINITIONS

In these general conditions the following expressions shall have the following meanings:

- a) "General Conditions" shall mean these general conditions of Purchase;
- b) "Goods" shall mean the goods and/or the services specified in the Order;
- c) "Order" shall mean the Purchaser's proposal concerning the purchase or the supply of Goods in accordance with the General Conditions;
- d) "Parties" shall mean collectively the Purchaser and the Supplier;
- e) "Purchaser" shall mean: (i) Comer Industries S.p.A. – having registered office in Reggio Emilia (RE), via Magellano n. 27, number of registration at the business register of Reggio Emilia 07210440157, share capital € 18.487.338,60 fully paid, under the direction and coordination of Eagles Oak S.r.l., having registered office in Modena, viale del Sagittario n. 5, number of registration at the business register of Modena n 03699500363, share capital € 2.000.000 fully paid – and/or its controlled and affiliated companies and its subsidiaries (hereinafter referred to as "Comer") are interested in the supply of components/equipment/raw materials and/or engineering and/or consulting services by your company (hereinafter referred to as the "Supply");
- f) "Supplier" shall mean any entity that sells or supplies Goods to the Purchaser;
- g) "Supply Agreement" shall mean the supply agreement arising from the acceptance, express or tacit, of the Order by the Supplier.

### 2. PURCHASE ORDER

2.1 The Supply Agreement is exclusively regulated by the General Conditions. The latter is intended accepted by the Supplier by the acceptance and/or the performance of the Order. Any amendment or addition, such as any term different, wholly or partially, from the General Condition shall be valid and effective only if it is expressly accepted by the Purchaser. In case of any conflict between the Supplier's general condition of sale and the General Conditions, the latter shall prevail. The General Conditions can be amended only by special conditions of purchase ("Special Conditions") expressly mentioned in the Order. Except that the General Conditions are expressly amended by the Special Conditions, the General Conditions preclude any other term and condition of the Supplier.

2.2 The Supply Agreement is valid and effective after two (2) working days from the Supplier's receipt of the Order, save that the Supplier gives notice in writing to the Purchaser of the refusal of the Order.

### 3. PRICE AND PAYMENT

3.1 The price of the Goods is fixed and invariable for any cause (force majeure included) even in case of increasing of raw material and labour costs as well as in case of increasing of any other cost of the production. The price of the Goods cannot be adjusted due to the change in exchange rates. Unless otherwise specified in the Order, the price of the Goods includes the costs of packaging, transportation, shipping and any and all additional costs related to the Supply Agreement.

3.2 The Purchaser will pay for the price of the Goods on the term indicated in the Order. If the Purchaser fails to pay such price on the due date, an interest of two (2) % per annum on overdue amount shall accrue in favour of the Supplier from the day of the Supplier's receipt of the notice to pay.

3.3 The Supplier shall not assign the price of the Goods to third parties nor delegate the payment of such price to third parties for any reason whatsoever.

3.4 The Purchaser may suspend the payment of the price of the Goods in case of faults, defects, deviations, malfunctions and, in any case, of any breach by the Supplier of its obligations under the Supply Agreement.

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3.5 The Purchaser is entitled to set-off any and all credit (even if not of a fixed amount and due) against the Supplier, within the limits of the costs arising from the breach of the Supply Agreement by the Supplier.

#### **4. PACKAGING AND DELIVERY**

4.1 If a special package for the Goods is not specified in the Order, the Supplier shall deliver the Goods adequately packaged.

4.2 Each package and container shall be labelled with the shipping information, the number of the Order, the shipping date and the name and address of sender and recipient. The Goods that need special care or special storage and transportation conditions shall be marked by the Supplier, indicating the precautions to be taken.

4.3 The Supplier is liable for any damage and cost due to faulty, incorrect or inadequate packaging, marking or labelling of the Goods.

4.4 The Goods shall be delivered to the place indicated by the Purchaser and they are acceptable only if they are accompanied by the relative shipping documents.

4.5 Regardless of the terms of delivery, the risks of loss and damage of the Goods shall be charged to the Supplier until the delivery of the Goods at the place indicated by the Purchaser.

4.6 Deliveries shall be carried out in unique batches and in compliance with the quantities indicated in the Order. However, the Purchaser has the right to accept quantity in excess up to a maximum limit equal to five (5) %, unless otherwise agreed by the Parties. The quantity in excess for each single Good will be returned by forwarder, at the Supplier's cost.

#### **5. DELIVERY TERM**

5.1 Time is of the essence in any Order under article 1457 of the Italian civil code.

5.2 The Supplier shall not deliver the Goods in advance without the express authorization of the Purchaser. In such a case, the Supplier shall not be entitled to any claim against the Purchaser.

5.3 If the Purchaser accepts a delayed delivery, the Purchaser will have the right to apply a penalty to the Supplier equal to 0.5% of the price of the Supply Agreement for each week or part of the week of delay, up to a maximum of 5% of the price of the Supply Agreement in addition to the further damages to be proved by the Purchaser.

5.4 Taking into account the primary interest of the Purchaser relating to the continuity of the Supply Agreement, the Supplier shall not suspend the performance of the Supply Agreement for any reason whatsoever.

#### **6. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

6.1 The Supplier shall fulfil all obligations according to the best professional care and communicate in advance to the Purchaser all change of its production process as well as the transfer of the place of manufacture of the Goods and / or the replacement of its sub-suppliers.

6.2 The Supplier expressly warrants that all Goods under the Supply Agreement shall conform in every respect to any scope of work, specifications, drawings, samples, or descriptions and / or specifications provided by the Purchaser. All Goods shall be new, of the best quality, free from defects in material or workmanship, manufactured under the industry standards best practices, complying with the regulations in force in every place where the Goods are intended, suitable for the intended use and consistent with the best standard of quality of the Purchaser's production. The Supplier warrants that it conveys the Goods to the Purchaser with good title, free of any liens or other encumbrances or claims by any third party of infringement or violation of proprietary or other rights. The Supplier warrants that the Goods shall conform

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to any and all applicable technical and safety provisions and comply in all respects with any and all applicable industry, federal, state and local laws, regulations, directives and standards including, but not limited to, those concerning safety, labour, health, environmental and fire. The Supplier further warrants that all Goods furnished hereunder will be merchantable and will be safe and appropriate for its manufactured purpose. If the Supplier knows or has reason to know the particular purpose for which the Purchaser intends to use the Goods, the Supplier warrants that such Goods will be fit for such particular purpose. The Supplier warrants that the Goods furnished will conform in all respects to samples. Inspection, testing, acceptance or use of the Goods furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranty shall survive inspection, testing, acceptance and use. The Supplier's warranty shall run to the Purchaser, its successors, assigns and customers, and users of products sold by the Purchaser.

6.3 The Supplier represents and warrants that:

- (a) it is a company / enterprise duly constituted, organized and active, which has all the powers necessary for the achievement of its corporate purpose;
- (b) it is not insolvent, nor it is into a crisis situation; it is not in liquidation, nor it has suffered injunctions or execution on its assets and / or credits;
- (c) it has the full power and authority to carry out its business, and it is entitled to all the permits, licenses and authorizations necessary for the performance of this business;
- (d) it has not been threatened by the establishment of procedures of any kind that may result in the revocation, cancellation or suspension of such permits, licenses and authorizations, nor are there any elements and / or circumstances which would reasonably be expected to these proceedings can be initiated;
- (e) it conducts and has conducted its business without breaches or violations of laws, regulations, contracts or otherwise.

6.4 The Goods are guaranteed for a period of twenty-four (24) months from the date of delivery or the service is performed. The complaint of the defects, non-conformities, malfunctions, lack of quality promises and / or agreed and / or non-compliance of the Goods is not subject to limitation period but must be sent to the Supplier before the warranty expires.

6.5 In case of defects, malfunctions, lack of quality promises and / or agreed and / or non-compliance of the Goods, the Supplier shall, within the time communicated by the Purchaser and in any case not more than two (2) working days of the receipt of the complaint, repair or replace thereof at Purchaser's option. If the Supplier does not carry out the repair or replacement within such period, the Purchaser may at its option and at Supplier's expense (including any losses or expenses incurred by the Purchaser): (i) to correct or have corrected the Goods, or (ii) to obtain replacement of the Goods from another source, or (iii) to terminate, in whole or in part, the Supply Agreement and to assert a claim for all damages even if they are not foreseeable or avoidable. The Goods repaired or replaced are guaranteed for the same period and under the same conditions of the original Goods.

6.6 Payment of the Goods cannot in any way be construed as acceptance of the Goods by the Purchaser.

6.7 The acceptance by the Purchaser of defective, non-compliant, lack of the qualities promised or agreed and / or not working Goods, does not in any way exclude or limit the warranty of the Supplier.

6.8 The Supplier gives to the Purchaser and any person authorized by the Purchaser the right to visit its factories and those of its sub-suppliers, subject to an agreement by the Parties in a timely manner. Inspection by the Purchaser shall not exclude or limit the liability of the Supplier and the Purchaser's right to reject the defective or not complying Goods.

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## **7. COMPLIANCE WITH LAWS – PERMITS AND AUTHORIZATIONS**

The Supplier shall: (i) comply with all applicable regulations (e.g. regarding quality, environmental, labour, health and safety), of any source, and industry best practices of the place of manufacture and marketing of Goods, and (ii) obtain all permits, licenses and documentation required for the performance of the Supply Agreement. In particular, the Supplier undertakes to respect fully all laws, decrees and regulations issued by local authorities or by other authorities, and any rules or regulations issued by private or public organizations.

## **8. EXCLUSIVITY**

The Supplier agrees not to produce, not to sell to third parties and in any case not to use products identical or similar to the Goods made of all or part of the drawings and / or specifications delivered or communicated by the Purchaser, and this both directly and indirectly, either on own account or on behalf of third parties.

## **9. INTELLECTUAL PROPERTY**

9.1 The Supplier warrants that the Goods do not infringe any patent, license, model or industrial design, copyright or any other rights of intellectual and industrial property of third parties. Such warranty shall not apply if the Goods are manufactured on Supplier's design. The Supplier shall also ensure that it and the Purchaser have the full right to use, produce and sell the Goods.

9.2 The Supplier agrees to indemnify or otherwise hold harmless the Purchaser and its customers from any claim, demand or action (including legal costs) for the infringement of intellectual or industrial property of third parties, and to compensate it for any damage, loss or injury suffered accordingly.

9.3 The use by the Supplier of industrial property rights of the Purchaser and /or of its customers is intended as a royalty-free, non-exclusive, non-transferable, and has a duration limited to the execution of the Supply Agreement. Consequently, the use by the Supplier of the Purchaser's industrial property rights does not create any right on the Supplier and any use of them is for the exclusive benefit of the Purchaser. The Supplier agrees not to affix any trademark, service mark, trademark, word mark, figurative mark or other distinctive sign on the Goods without prior written consent of the Purchaser.

9.4 All industrial property rights and economic exploitation inherent drawings, plans, technical descriptions, specifications, designs, manufacturing methods, calculations, and other data and information provided and / or disclosed by the Purchaser, relating to the Goods are exclusive property of the Purchaser and the Supplier shall not disclose or otherwise use them, both directly and indirectly, without the prior written consent of the Purchaser.

9.5 The Supplier shall not use or cause to use to third parties the industrial property rights of the Purchaser in order to sell or to market any product other than the Goods or use or cause to use to third parties any industrial property right identical or similar to the Purchaser's industrial property rights of the Goods.

9.6 In the event of industrial inventions and / or know-how belonging to the Supplier and the Purchaser, each Party can use and exploit the mutual property rights, even for products other than the Goods.

9.7 Any data, design, equipment or other material or information which is: (i) provided by the Purchaser or (ii) provided by the Supplier but paid by the Purchaser, it is the exclusive property of the Purchaser.

## **10. LOAN FOR USE OF EQUIPMENT AND INDUSTRIAL TOOLS**

10.1 The equipment and the industrial tools necessary for the provision of the Goods that the Purchaser delivers to the Supplier shall be deemed granted on loan and must be returned to the Purchaser at its request. By taking delivery of the equipment and industrial tools, the Supplier acknowledges that the

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equipment and industrial tools (i) are technically appropriate and necessary for the provision of the Goods and (ii) have the value estimated by the Purchaser.

10.2 The Supplier agrees to: (i) obtain all the authorizations, permits, licenses and other acts of any authority may be necessary for the use of the equipment and the industrial tools and undertakes to use the latter solely to fulfil the Supply Agreement, strictly complying with the requirements of the construction drawings, technical specifications, manuals of installation and operation, supporting the costs of normal maintenance; (ii) stipulate and maintain in force for the duration of the Supply Agreement an insurance policy to cover any possible damage to the equipment and the industrial tools; (iii) pay damages to people and things arising and / or in connection with the use of the equipment and the industrial tools.

10.3 The Supplier waives: (i) the right to retain the equipment and the industrial tools, for whatever reason or cause, even if the Purchaser had failed to fulfil his obligations arising from the Supply Agreement; (ii) to enforce against the Purchaser any right to compensation for any damages which may arise from failures, malfunctions and /or burning of the equipment and the industrial tools.

## **11. CONFIDENTIALITY**

11.1 Each design, data, and specific document, or any other technical or commercial information (including drawings, sketches, models, patterns, samples and components) provided by the Purchaser to the Supplier, or otherwise acquired by the latter during the performance of the Supply Agreement, must be treated confidentially. The Supplier may not transfer or extend this information to third parties without the prior written consent of the Purchaser. The above shall not apply to the information that the Supplier proves to be: (i) publicly available (ii) hold by the Supplier before they were communicated by the Purchaser, (iii) subject to disclosure by order of a public authority.

11.2 The Purchaser and the Supplier undertake to treat the confidential information only for the performance of the Supply Agreement and to not use them for any other activity, nor to forward them to third parties.

## **12. RELEASE**

The Supplier shall indemnify, defend and hold the Purchaser and its directors, officers, employees, agents, subsidiaries, parents and affiliates (each a "Purchaser Protected Party") harmless from and against any and all claims (including third party claims for personal injury or real or personal property damage), actions, suits, damages, losses, deficiencies, liabilities, obligations, commitments, costs or expenses of any kind or nature (including reasonable legal and other expenses incurred in investigating and defending against the same, and interest) incurred by such Purchaser Protected Party resulting from any breach of the Supply Agreement by the Supplier.

## **13. WITHDRAW**

Unless otherwise stated by the Parties, the Purchaser has the right to withdraw without cause from the Supply Agreement by providing 30 (thirty) days written notice to the Supplier. The termination of the Supply Agreement by the withdrawal shall affect neither the Supply Agreements in force between the Parties nor the Orders issued by the Purchaser at the time of the withdrawal. In case of withdrawal, the Purchaser shall indemnify the Supplier from the costs reasonably incurred and properly documented relating to the Supply Agreement. No other amount will be paid by the Purchaser to the Supplier by way, for example, of loss of profits, loss of business opportunities, damages, compensation or otherwise.

## **14. LIABILITY AND INSURANCE**

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14.1 The Supplier is liable to the Purchaser and to any third parties for any damage caused by the defective Goods.

14.2 The Supplier shall stipulate with a leading insurance company a suitable contractor all risks (CAR) insurance. This insurance shall be valid and effective until the expiration of the warranty period for the Goods. The Supplier agrees to provide to the Purchaser, upon request, a copy of the insurance certificate proving the validity and effectiveness of the aforementioned insurance. The Supplier's furnishing of certificates of insurance shall not release the Supplier of its obligations or liabilities under the Supply Agreement.

## **15. GENERAL PROVISIONS**

15.1 The principles of fairness and good faith (*bona fide*) are of the essence for the performance and the interpretation of the Supply Agreement. The Supplier acknowledges and agrees to undertake the obligations arising from the Supply Agreement also with effectiveness of moral commitment and honour.

15.2 If any provision of the General Conditions and / or the Supply Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.3 No amendment, waiver or modification of any of the terms of the General Conditions and / or the Supply Agreement shall be valid unless in writing and signed by the Parties.

15.4 No failure to exercise, and no delay in exercising, any right or remedy in connection with the General Conditions and / or the Supply Agreement shall operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy under the General Conditions and / or the Supply Agreement shall preclude any other or further exercise of that right or remedy or the exercise of any other right or remedy. A waiver of any breach of the General Conditions and / or the Supply Agreement shall not be deemed to be a waiver of any subsequent breach.

15.5 Upon receipt of the information in accordance with D.Lgs. 30 June 2003, nr. 196, the Parties give their assent to the inclusion and processing of personal data in their respective databases.

15.6 All communications between the Parties shall be made by registered letter with return receipt, by fax, by email or by web-site GLOBAL SOURCING of Comer Industries.

15.7 The rights and remedies provided to the Purchaser in the General Conditions and / or the Supply Agreement shall be considered in addition to any other rights and remedies provided by law. It remains understood that no clause of the General Conditions can be understood as a limitation or exclusion of the rights granted to the Purchaser by the law.

## **16. CODE OF ETHICS AND MODEL OF ORGANISATION, MANAGEMENT AND CONTROL (D.LGS. 231/2001)**

The Supplier represents that he is aware of:

i. the current legislation concerning the administrative liability of the companies and, in particular, that he is aware of the provisions of D.Lgs. 231/2001;

ii. the adoption and the implementation by the Purchaser of the "Model of organization, management and control" prepared in accordance with the provisions of D.Lgs. 231/2001 whose principles the Supplier fully agrees without exception. The Supplier represents that he is aware of the Purchaser's "Code of Ethics", available on the website <http://www.comerindustries.com>, and undertakes to fulfil it for the performance of the Supply Agreement.

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The Supplier warrants that he has adopted and implemented all the measures to prevent crimes in accordance with the law on administrative liability of the companies and, in particular, in accordance with D.Lgs. 231/2001.

## 17. TERMINATION

The Purchaser has the right to terminate the Supply Agreement under article 1456 of Italian civil code, in case that the Supplier breaches one or more of the obligations contained in the articles 3 (Price and Payment), 4 (Packaging and Delivery), 5 (Delivery Term), 6 (Representations and Warranties of the Purchaser), 7 (Compliance with laws – Permits and Authorizations), 8 (Exclusivity), 9 (Intellectual Property), 11 (Confidentiality), 14 (Liability and Insurance) and 16 (Code of Ethics and Model of organisation, management and control (D. Lgs. 231/2001)).

## 18. APPLICABLE LAW

The General Conditions, the Supply Agreement and any matter related to the Goods supplied by the Supplier to the Purchaser are governed by and shall be construed in accordance with the laws of the Republic of Italy, irrespective of its choice of law or conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention 1980 as amended) shall not apply to the Supply Agreement.

### ***Eventuale se non si riesce a imporre la nostra clausola:***

The General Conditions, the Supply Agreement and any matter related to the Goods supplied by the Supplier to the Purchaser shall be governed by and construed in all respects in accordance with the United Nations Convention on Contracts for the International Sale of Goods (“Vienna Convention”) and Lex Mercatoria for any matter not covered by Vienna Convention.

## 19. JURISDICTION

If a dispute arises in connection with the General Conditions, the Supply Agreement or any matter related to the Goods, the responsible representatives of the Parties to the dispute shall attempt, in fair dealing and good faith, to settle such dispute. Upon request of a Party a senior management representative of each Party shall participate in the negotiations. Each Party shall be entitled to terminate these negotiations by written notification to the other Party at any time.

The Parties shall attempt to agree on a procedure for Alternative Dispute Resolution (ADR) and the applicable procedural rules (including time limits) within fourteen (14) calendar days after a termination notice has been received by the other side.

All disputes arising in connection with the General Conditions, the Supply Agreement or any matter related to the Goods, which are not resolved pursuant to an ADR procedure, including any question regarding the termination or any subsequent amendment of the General Conditions and/or the Supply Agreement, shall be brought before the Court of Modena, Italy, which has the exclusive jurisdiction. As an exception to the principle hereabove, the Purchaser shall, in any case, be entitled to summon the Supplier before the competent court of the place where it has its registered office.

### ***Eventuale se non si riesce a imporre la nostra clausola di Jurisdiction:***

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## 19. ARBITRATION

If a dispute arises in connection with the General Conditions, the Supply Agreement or any matter related to the Goods, the responsible representatives of the Parties to the dispute shall attempt, in fair dealing and good faith, to settle such dispute. Upon request of a Party a senior management representative of each Party shall participate in the negotiations. Each Party shall be entitled to terminate these negotiations by written notification to the other Party at any time.

The Parties shall attempt to agree on a procedure for Alternative Dispute Resolution (ADR) and the applicable procedural rules (including time limits) within fourteen (14) calendar days after a termination notice has been received by the other side.

All disputes arising in connection with the General Conditions, the Supply Agreement or any matter related to the Goods, which are not resolved pursuant to an ADR procedure, including any question regarding the termination or any subsequent amendment of the General Conditions and/or the Supply Agreement, shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Zurich, by three arbitrators, or one arbitrator if the value of the total matter in dispute is less than 1 million EUR, in accordance with such rules.

The seat of arbitration shall be Zurich. The language to be used in the ADR and the arbitration proceeding shall be English.

Any production of documents shall be limited to the documents on which each Party specifically relies in its submission(s).

The unsuccessful Party shall bear the costs of the arbitral proceedings. However, the arbitral tribunal may take into account the extent to which each Party has conducted the arbitration in an expeditious and cost-effective manner.

Disputes settled through arbitration are confidential. The confidentiality includes all information shared during the arbitration and any settlement, decision or verdict in connection with the arbitration.

The General Conditions are signed by the Supplier to signify its acceptance thereof	
<b>Place and Date</b>	<b>Stamp and signature</b>
The Supplier agrees to approve the following General Conditions clauses, within the meaning and for the purposes of articles 1341 and 1342 of the Italian civil code: articles 2 (Purchase Order), 3 (Price and Payment), 4 (Packaging and Delivery), 5 (Delivery Term), 6 (Representations and Warranties of the Purchaser), 8 (Exclusivity), 13 (Withdraw), 14 (Liability and Insurance), 15 (General Provisions), 18 (Applicable Law), 19 (Jurisdiction). 19 (Arbitration).	
<b>Place and Date</b>	<b>Stamp and signature</b>

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art. 2497 bis Cod. Civ. - La società è soggetta ad attività di direzione e coordinamento

da parte di Eagles Oak Srl, con sede in 41126 Modena, Via del Sagittario 5

Cap. Soc. Euro 2.000.000 i.v. - Reg. Imprese di Mo n. 03699500363





**comer industries**