

# **ACROMIL CORPORATION**

## **Quality Form**

**Title: Purchase Order Terms and Conditions**

**Number: QF-74-2POTC**

This document sets forth the Terms and Conditions that govern all sales to and purchases by Acromil of Goods and Services. These Terms and Conditions are effective for all sales to and purchases by Acromil unless otherwise modified. The Terms and Conditions (1 through 36) apply to every Purchase Order. Unless otherwise stated on the face of the Purchase Order, the following Quality Assurance Clauses shall apply. These Quality Assurance Clauses will vary and will be specifically called out on every Purchase Order issued to Seller or Supplier. Their specifically assigned QC clause numbers (i.e., QC1, QC2) will reflect them. Also, any Customer specific requirements will be spelled out on the Purchase Order as required.

### **DEFINITIONS**

As used throughout these Terms and Conditions and any other Contract or Purchase Order referencing these Terms and Conditions, the following definitions apply unless the context requires otherwise:

“Acromil” means Acromil Corporation, a California corporation, and any parent or subsidiary thereof.

“Seller” or “Supplier” shall mean the contracting party with whom the Purchase Order is placed.

“Articles” or “Goods” or “Services” shall mean all goods and services to be supplied under the Purchase Order.

“Order” or “Purchase Order” or “Contract” or “Long Term Agreement” (“LTA”) (if the context so requires) shall mean the authorized ordering mechanism placed by Acromil with Seller for Articles, including the Terms and Conditions set forth herein.

Where there are multiple words using the same definition, these words may be used interchangeably.

### **TERMS AND CONDITIONS (APPLY TO EVERY P.O.)**

#### **1. AGREEMENT**

Acromil hereby issues a Purchase Order to Seller for Goods or Services. As written, the Purchase Order becomes a binding contract on the terms set forth in the Purchase Order and the Terms and Conditions herein, when accepted by Seller via a formal written acknowledgement to Acromil or by commencement of any of the work which is the subject of the Purchase Order. The Purchase Order expressly limits acceptance to the Terms and Conditions stated thereon and herein. Any additional or different terms proposed by Seller are rejected unless expressly agreed to in writing by Acromil. Acromil and Seller further agree that the period of limitation on the commencement of any action, suit or legal proceedings relating to the Purchase Order or to any default or

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alleged default hereunder, must be commenced within two (2) years from the date of the event giving rise to the claim. The Purchase Order is non-assignable by Seller unless expressly agreed to by an authorized representative of Acromil in writing. If any term or provision of the Purchase Order, these Terms and Conditions or the application thereof shall be deemed invalid or unenforceable, the remaining portions shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.

## **2. BUYER'S PROPERTY**

Any and all drawings, models, software programs, tools, dies, patterns, specialty equipment or information created and specifically paid for or supplied by Acromil under the Purchase Order shall be the sole property of Acromil, used only to complete Acromil's Purchase Orders, and returned to Acromil when no longer required by Seller hereunder.

## **3. CHANGES**

Acromil reserves the right, at any time, to make written changes to any of the following: (a) specifications, drawings and data incorporated in the Purchase Order where the Goods to be furnished are to be manufactured for Acromil, (b) methods of shipment or packing, (c) place of delivery, (d) time of delivery, (e) manner of deliver, and (f) requested quantities. If any such change causes an increase or decrease in the cost or the time required for performance of the Purchase Order, an equitable adjustment shall be made in the contract price or delivery schedule or both. An authorized representative of Acromil, in writing, must approve any claim by Seller for adjustment under this clause before Seller proceeds with such change. Price increases shall not be binding on Acromil unless evidenced by purchase or change notice or revision issued and signed by an authorized representative of Acromil.

Notwithstanding the above, if Acromil enters into an agreement with a customer which provides for no cost increase as a result to changes in delivery or work schedule, this same provision will apply to any Purchase Order(s) issued hereunder to Seller.

Changes may be ordered by Acromil only by a writing signed by an authorized representative of Acromil's Purchasing Department or Executive Management, which expressly states that it constitutes a change to a specified Purchase Order. If Seller believes that any other conduct has constituted a change under a Purchase Order, it will notify Acromil immediately in writing as to the nature of such conduct and its effect upon Seller, but will take no steps to implement a change absent written direction from an authorized representative of Acromil's Purchasing Department consistent with the preceding sentence.

## **4. COMPLIANCE WITH LAWS**

Seller agrees that all Goods produced under the Purchase Order, or Services performed hereunder shall comply with all applicable federal, state and local laws,

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ordinances and regulations. Unless otherwise expressly set forth herein, the laws of the State of California shall apply to and govern the interpretation, performance and enforcement of the Purchase Order. Seller further guarantees that all Goods furnished by Seller in performance of the Purchase Order shall comply fully with the Occupational Safety and Health Act, as amended, and state plans approved under such Act, and the regulations hereunder, to the extent applicable to such Goods, and Seller shall indemnify Acromil and its customers from and against any claims, loss or liability arising from failure of such Goods to comply therewith.

Without limiting the generality of the forgoing, Seller agrees to comply with the applicable provisions of the following laws and any regulations, rulings or executive Purchase Orders (or any amendments thereof or successors thereto), including but not limited to the following: (a) The Fair Labor Standards Act (29 U.S.C. 201 et seq.), (b) The Federal Occupational Safety and Health Act (OSH Act) (Pub. L 91-596) (29 U.S.C. 651 et seq.), (c) Non-discrimination in Employment (Executive Purchase Orders as amended and the rules, regulations, and relevant Purchase Orders of the Secretary of Labor), and, insofar as applicable to the Purchase Order, the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) and the Work Hours Act of 1962 (40 U.S.C. 327-332), and any amendments thereof. Seller further certifies that it has and will comply with Executive Order 13201 issued February 17, 2001 and all laws and regulations concerning the export and import of goods and technical data.

## **5. ENVIRONMENTAL COMPLIANCE**

All Purchase Orders and Contracts include the environmental compliance expectations of Acromil. Seller shall be responsible for complying with all laws, including, but not limited to, any statute, rule, regulation, judgment, decree, Purchase Order or permit applicable to its performance under the Purchase Order. Seller further agrees:

- (1) To notify Acromil of any obligation under the Purchase Order which is prohibited under any applicable environmental law, at the earliest opportunity but in all events sufficiently in advance of identification of alternative methods of performance, and
- (2) To notify Acromil at the earliest possible opportunity of any aspect of its performance which becomes subject to additional environmental regulation or which Seller reasonably believes will become subject to additional environmental regulation during performance of the Purchase Order.

## **6. EQUAL EMPLOYMENT OPPORTUNITY**

Seller is on notice that Acromil may utilize the Goods specified in the Purchase Order in the transaction of business with the United States Government. Seller is therefore deemed to have assumed the obligation of compliance with Executive Order 11246 and said Amendments, and unless otherwise exempt under the rules, regulations and

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Purchase Orders of the Secretary of Labor, the Purchase Order is subject to the laws, regulations, and policies of the Equal Employment Opportunity Commission.

### **7. FORCE MAJEURE**

Either Acromil or Seller may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities, or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance.

### **8. HAZARDOUS SUBSTANCES IDENTIFICATION**

By acceptance of the Purchase Order, Seller certifies that any hazardous substance(s) furnished pursuant to the Purchase Order have been properly labeled and that proper information of the substance(s) (e.g., Material Safety Data Sheets) has been provided to Acromil pursuant to any federal, state or local laws and regulations.

### **9. INDEMNIFICATION**

Seller agrees to defend, indemnify and hold harmless Acromil and its affiliates, and their officers, agents, employees, successors and assigns, from and against any claims, loss, damage or expense, including, without limitation, payment of direct, special, incidental and consequential damages, and expenses of defending claims, including attorneys' fees arising out of or relating to the Order. This duty to defend, indemnify and hold harmless extends to any suit, claims, judgment or demand which may arise out of or in connection with Seller's performance or nonperformance of any Purchase Order placed by Acromil, out of or in connection with Seller's breach of warranty, out of any defect in the supplies or materials, out of any patent infringement or misappropriation of trade secrets, or failure of Seller to pay royalties, or any other breach of Seller's obligations hereunder, whether such claim or suit is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and also extends not only to "third party claims" but also to any direct loss suffered by Acromil.

### **10. INSPECTION**

All goods shall be received subject to Acromil's inspection and acceptance or rejection. In the event any of the Goods is found to be defective or otherwise not in conformity with the requirements of the Purchase Order, Acromil shall have the right to reject the same or require that such goods be corrected or replaced promptly with satisfactory Goods. If Acromil so rejects the Goods or if Seller, when requested by Acromil, fails to proceed promptly with the replacement or correction thereof, Acromil may either

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terminate the Purchase Order for default or may replace or correct such Goods and in either event may charge Seller the cost of damages occasioned Acromil thereby.

Rejected or defective Goods not delivered in accordance with Acromil's specifications shall be held for Seller's instruction and at Seller's risk. If Seller so directs, the rejected or defective Goods shall be returned at Seller's expense. Unless Acromil, at its option, notifies Seller to the contrary, no goods returned as defective shall be replaced without a new Purchase Order. Payment for goods on the Purchase Order prior to inspection shall not constitute an acceptance thereof.

If a First Article, complete with an inspection report, is required prior to commencing production, it will be stated as such on the Purchase Order. Any parts produced prior to approval of a First Article Inspection are produced at Seller's risk.

Serialization requirements are imposed for all parts. All parts have unique serial numbers assigned and Seller shall maintain Serial Number Traceability at all stages of manufacturing or processing. Serial Numbers shall be indicated on all certifications, shipping reports and or document.

If Source Inspection, either Acromil, Acromil's Customer and/or the United States Government, is required prior to shipment, it will be stated as such on the Purchase Order. Any parts shipped without the required inspection will be returned at Seller's expense.

Acceptance of goods shall be accomplished at Acromil unless otherwise specified in writing. Evidence of inspection at Supplier's facility does not constitute acceptance. Government inspection shall not constitute Acromil's acceptance; nor shall it in any way relieve Supplier of their responsibility to furnish an acceptable end item.

In addition to any other rights is may have under the relevant Purchase Order, these Terms and Conditions, or otherwise, Acromil may recover by offset or otherwise any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or nonconforming goods or services.

The inspection, review or approval by Acromil of any work, or of any drawing, design or other document, will not be deemed to relieve Seller of any of its obligations under any Purchase Order or constitute a waiver of any defects or nonconformities. The acceptance by Acromil of any Goods or Services under any Purchase Order will not be deemed to limit or affect any warranty or right of indemnity granted by Seller under such Purchase Order, these Terms and Conditions or otherwise.

## **11. INSURANCE**

Seller agrees to provide and maintain insurance coverage from reputable insurance companies until the Purchase Order work is completed and accepted by Acromil, and to furnish certificates from its insurance carriers showing that it carries insurance with the

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following minimum limits: (a) Statutory Workers' Compensation and Occupational Disease coverage in accordance with the laws of the State(s) in which the work is to be performed and Employers' Liability for not less than \$1,000,000; (b) Comprehensive General Liability insurance with Seller's contingent with a Combined Single Limit (Bodily Injury/Property Damage) Liability of \$1,000,000 per occurrence, with Acromil named as an Additional Insured; (c) Automobile Public Liability, including non-ownership and hired car-coverage, with Combined Single Limit Liability (Bodily Injury/Property Damage) of \$1,000,000 per occurrence.

### **12. NONCONFORMING MATERIAL**

Seller is **NOT** authorized to perform material review action of nonconforming material with the intent of delivering such nonconforming material without the express **written** authorization from Acromil. Disposition of any departures from drawings, specifications, or other Purchase Order requirements **must** be approved **in writing** by Acromil's Quality Department prior to shipment from Supplier's facility.

### **13. ORGANIZATION CHANGE NOTIFICATION**

Suppliers are required to notify Acromil of any change to the organization (i.e. Management, Facility Location, Process Change, or Changes in Product) and obtain written approval from Acromil.

### **14. PACKING AND SHIPPING**

Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of Acromil's Packing, Marking and Shipping Instructions as presented by Acromil to Supplier from time to time, subject to any modifications or additional terms set forth in the relevant Purchase Order, and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable Federal, State and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge is payable by Acromil for containers, crating, boxing, handling, dunnage, drayage or storage unless specifically stated in the Purchase Order or otherwise agreed to by Acromil in writing. Seller shall mark each container with the number of the Purchase Order, part number and any other markings called for on the face of the Order and/or shipping instructions, and shall enclose a packing slip with the Purchase Order number item description, part number, serial number, quantity and total number of containers in an envelope attached to each container. Certifications required on the face of the Purchase Order or by the technical data must also be included with the shipment of articles. Damage resulting from improper packing or shipping will be charged to Seller.

### **15. INVOICING**

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All Acromil invoices are to be forwarded to Acromil's Accounts Payable Department, 18421 Railroad Street, City of Industry, California 91748. Each invoice must:

- (a) Show the relevant Acromil Purchase Order number;
- (b) Itemize all taxes to be paid by Acromil;
- (c) Contain line item number, description, unit price, quantity and extended price, if any; and
- (d) If requested by Acromil in writing, contain Seller's certification that all goods and services reflected therein were produced and supplied in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the U.S. Department of Labor issued thereunder.

Failure to detail any of the above may result in a delay in payment by Acromil.

Acromil may offset against any amounts due under Seller's invoices: (a) any damages resulting from Seller's default under or breach of any Contract (including any Purchase Order and these Terms and Conditions); (b) any amount owing from Seller to Acromil; or (c) any adjustment for shortage or rejection and any costs occasioned thereby.

If, in its discretion, Acromil accepts any shipment ahead of schedule, Acromil may make payments therefore on the basis of the scheduled delivery date. The date for the calculation of Acromil's entitlement to take a discount under any Seller invoice will be the date materials acceptable to Acromil are received, the date an acceptable invoice is received or the scheduled delivery date, whichever is the latest.

All prices indicated in Purchase Orders include all applicable taxes, impositions (including, but not limited to, import and export duties) and other similar charges, unless specifically indicated otherwise in such Purchase Order.

## **16. PATENTS**

Seller agrees to hold Acromil harmless from liability as well as from all costs and expenses relating to a claim of patent or trademark infringement by reason of the use or sale of the Goods by Acromil, or its customers, provided the Goods are used as normally intended and are not made to Acromil's own specifications.

## **17. PERFORMANCE**

Time is of the essence on the Purchase Order and deliveries are to be made in quantities and at times specified in schedules furnished by Acromil. Acromil shall have no liability for payment for Goods or items delivered to Acromil that are in excess of quantities specified in the delivery schedule or the direct temporary suspension of scheduled shipments. Seller acknowledges that it is aware that Acromil intends to use the Goods in connection with the manufacture of goods for sale to Acromil's Customers under contracts that require timely delivery. In the event of default on the part of Seller to deliver conforming Goods to Acromil on time, Seller acknowledges that it shall be

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liable to Acromil for Acromil's incidental and consequential damages incurred by reason of such default. Acceptance by Acromil of late delivery of either the whole or part of the Purchase Order shall not constitute a waiver of any claim for damages which Acromil may have arising from and out of such late delivery. Goods shipped to Acromil in advance of delivery schedule, without express written consent of Acromil, may be returned to Seller at Seller's expense.

### **18. PRICE & TAXES**

All prices shall be F.O.B. point of delivery (destination), unless otherwise specified herein; inclusive of applicable taxes, excises, duties, quotation fees or any other governmental impositions on or related to the production, sale or transportation of the Goods, ceiling or other limitation of price established by any governmental authority, and subject to increase only with prior written consent of Acromil.

### **19. PROPRIETARY RIGHTS**

All technical information in the nature of design blueprints, models, specifications, parts lists, engineering data for production, product know how or manufacturing technology which is supplied to Seller by Acromil to facilitate or assist in the performance of this contact shall, unless otherwise agreed, be considered and kept confidential by Seller. Upon completion, cancellation or termination of the Purchase Order, Seller shall return all proprietary information submitted by Acromil.

### **20. PUBLICITY**

Seller shall not, without first obtaining the written consent of Acromil, in any manner, advertise, publish, or convey by word of mouth the fact that Seller has contracted to furnish Acromil the goods herein ordered. Seller shall not take pictures of any Goods without Acromil's prior written consent. In the event Acromil consents to pictures being taken by Seller, such pictures shall not be disseminated or published without Acromil's prior written consent.

### **20A. RECORDS**

Records shall be legible and identifiable to the product involved. Records that substantiate conformance to the finished product with the specified requirements and the effective operation of the quality system shall be retained for a period of (7) years from final payment and shall be made available on request.

NOTE: Records may be in the form of any type of media, such as hard copy or electronic, and may include but are not limited to the following: records pertaining to inspection, certification of processes, certification of material, test reports, qualification data, Purchase Order records and design data applying to the Purchase Order.

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### **21. RIGHT OF ENTRY**

Seller shall provide and obtain for Acromil, Acromil's Customers, and appropriate regulatory agencies access to any and all facilities, including those facilities of Seller's subcontractors, where work on Goods is being performed or is scheduled to be performed under the Purchase Order. Acromil shall have right to perform in-process inspection, audits, and system surveillance at Seller and Seller's subcontractors' facilities as part of verification of conformance to the requirements of the Purchase Order.

### **22. SUBCONTRACTING**

Subcontracting all or part of the work procured on the Purchase Order without written approval of Acromil is prohibited. All approved subcontracted operations must meet all provisions of the Purchase Order and be certified to by the subcontractor.

### **23. TERMINATION**

Acromil may terminate work under the Purchase Order in whole or in part at any time by letter, fax or telegraphic notice to Seller. Such notice shall state the extent and effective date of such termination and upon receipt thereof, Seller shall, as and to the extent directed by Acromil, stop work under the Purchase Order and the placement of further Purchase Orders or sub-contracts hereunder, terminate work under Purchase Orders and sub-contracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Acromil has or may acquire an interest. If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to Seller for such termination, Acromil, in addition to making prompt payment of the amounts due for goods delivered or Services rendered prior to the effective date of termination, shall pay to Seller the following amounts without duplication: (a) the contract price for all goods or Services which have been completed in accordance with the Purchase Order and not previously paid for, or (b) the actual costs incurred by Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of the Purchase Order. In any case, the negotiated settlement amount shall not exceed the aggregate price specified in the Purchase Order.

### **24. WARRANTY**

Seller warrants that the Goods, including material and workmanship, furnished hereunder shall be of the highest grade and quality unless otherwise specified by Acromil in writing; shall not be less than merchantable and fit for the particular purpose(s) known by or disclosed to Seller; shall meet specifications, drawings, or standards agreed upon or samples submitted or approved by Acromil; and shall conform to any referenced additional documents. Seller warrants that the Goods shall comply with all applicable federal and state laws and shall be in compliance with all standards and agreements incorporated and made a part of the Purchase Order. In the

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event that any Goods are not in compliance with any state or federal law or regulation or not in compliance with any agreement or standard incorporated herein, now existing or hereafter enacted or amended, or are otherwise defective hereunder, Acromil may (at Acromil's option) return the defective Goods to Seller who shall refund to Acromil its cost, including all freight charges, or repair, correct or replace the defective Goods at Seller's cost and expense.

Payment by Acromil shall not constitute an acceptance of Goods or a waiver of any rights of Acromil hereunder. All warranties granted hereunder shall extend to Acromil, its affiliates, successors, customers and other users of this goods or equipment.

### **25. MOST FAVORED CUSTOMER**

Seller warrants that it will not charge Acromil more for any goods or services, or any item thereof, than it charges its best customers under comparable conditions. Seller will refund to Acromil promptly upon demand any amounts paid by Acromil which reflect a breach by Seller of the immediately preceding sentence.

### **26. SUSPENSION OF WORK**

Acromil may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by a Purchase Order for a period of 90 days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of the order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated 90 day period, Acromil will either (i) cancel the stop-work order, or (ii) let such stop-work order expire, or (iii) terminate the work covered by the stop-work order either for default or for convenience in accordance with these Terms and Conditions and the relevant Purchase Order. If a stop work order is cancelled or allowed to expire, and the suspension effected thereby has a material effect on Seller's costs or ability to meet the Purchase Order's delivery schedule, Acromil will make an adjustment in the delivery schedule or purchase price (but with no increase in profit allowed), or both, and the Purchase Order will be modified accordingly, but only if requested by Seller in writing within twenty (20) days after the suspension ends.

### **27. DEFAULT**

Time is of the essence in the Purchase Order. It will be considered a default under any Purchase Order and these Terms and Conditions if Seller: (i) refuses or fails to deliver any goods or perform any services strictly within the time specified in such Purchase Order; (ii) fails to strictly comply with any other provision of such Purchase Order or these Terms and Conditions; (iii) fails to make progress so as to endanger performance of such Purchase Order in accordance with its terms and these Terms and Conditions, or repudiates such Purchase Order; or (iv) suspends its business or becomes insolvent or subject to any law relating to bankruptcy, insolvency or relief from creditors, or takes any action in anticipation thereof.

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In the event of any default by Seller under any Purchase Order or these Terms and Conditions, Acromil may terminate such Purchase Order (and all related Purchase Orders. In the event of any such termination for default, Seller will be liable to Acromil for any and all damages sustained by reason of such default.

- (a) If Acromil terminates any Purchase Order for default in whole or in part, it may acquire, under the terms and in the manner that Acromil considers appropriate, supplies or services similar to those terminated, in which case Seller will be liable for any excess costs for those supplies or services. Upon a termination in part, Seller will continue any work not terminated.
- (b) If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for Acromil's convenience.
- (c) The rights and remedies of Acromil in this clause are in addition to any other rights and remedies provided by law or under the Purchase Order.

### **28. TERMINATION FOR CONVENIENCE**

Whether or not a Purchase Order relates to a government contract, Acromil may terminate any Purchase Order in whole or in part in accordance with the termination clause set forth in the United States Federal Acquisition Regulation (FAR 52.249-2) and the policies and principles set forth in Part 49 of the FAR, all of which are hereby incorporated by reference, except that in FAR 52.249-2: (i) the term "Contractor" shall be deemed to mean Seller; (ii) the terms "Contracting Officer" and "Government" shall be deemed to mean Acromil; (iii) the one year period in paragraph (d) for submitting a final termination settlement proposal is reduced to sixty (60) days; and (iv) the 90-day period in paragraph (k) for submission of a proposal for an equitable adjustment of the price in the event of a partial termination is reduced to thirty (30) days. Seller shall use its best efforts to mitigate the costs arising from such termination. In no case shall the amount payable by Acromil for the terminated work exceed the price which would have been payable by Acromil had the work been completed. Acromil reserves the right to recover any partly completed work, including but not limited to any relevant tools, fixtures, jigs, documentation or raw material. The failure of Seller to file a claim within the applicable period in accordance with the FAR and the immediately preceding sentence will constitute a waiver and be the basis for a complete denial of any such claim. The provisions of this Paragraph 13 shall not be deemed to limit or affect the rights or remedies of Acromil provided elsewhere in any Purchase Order, these Terms and Conditions, or provided by law in the event of default or breach by Seller.

### **29. NC PROGRAMS, TOOLS AND MATERIALS**

Title to and the right of immediate possession of all NC programs, tools, dies, patterns, replacements and materials furnished or paid for as a direct charge by Acromil ("nonrecurring charges") or called out as a special item for use under any Purchase Order ("special tooling and materials") will be and remain the property of Acromil. All

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special tooling and materials will not be used in the production of other quantities than those specified by Acromil in a Purchase Order. Upon completion of any relevant Purchase Order, all special tooling and materials will be disposed of by Seller or returned to Acromil, as Acromil shall direct. All special tooling and materials (i) will be segregated by Seller at Seller's plant and clearly marked as belonging to Acromil, (ii) will be used solely in the performance of work ordered by Acromil, (iii) will be insured against loss and (iv) will not be copied. Seller assumes complete liability for all special tooling and materials while in Seller's possession. Seller will reimburse Acromil for damage to Acromil's special tooling beyond normal wear and tear while in Seller's possession. Acromil reserves the right to use at any time all special tooling and materials. Seller will be responsible to Acromil for any and all consigned materials. Seller will communicate to Acromil, in such manner and such times as Acromil directs, any and all instances wherein Seller fails to yield prescribed requirements from Acromil's material. Upon completion of specific Purchase Order requirements, Seller will furnish to Acromil any and all residual materials and an accounting of any and all deviations from the prescribed order requirements. At Acromil's direction, Seller will at its cost, return to Acromil any "fall off" material. If any item fabricated by Seller from material furnished by Acromil is defective, or any furnished material is damaged while in Seller's possession, Seller will reimburse Acromil to the full extent of its damages.

### **30. DESIGN WORK**

Where any work in pursuance of the Purchase Order includes design work to be performed by Seller, such design shall be deemed to have been prepared for Acromil and shall be considered as a work for hire and all rights and the copyright thereof shall be considered as a work for hire and all rights and the copyright therefore shall be owned by Acromil. Seller assigns all rights, title and interest to any such design and any such copyright to Acromil including all rights to registration, publication, rights to create derivative works and all other rights that are incident to ownership. In the event that any court holds such creative works not to be works for hire, Seller agrees to assign such creative works to Acromil at Acromil's request in consideration of the price paid for Articles hereunder.

### **31. PROGRESS REPORTING**

Seller will submit as requested by Acromil progress reports and other charts and materials to provide complete visibility of planned program tasks and progress against such tasks, in any format reasonably requested by Acromil. Such reports may be required as frequently as weekly or daily, if necessary.

### **32. ORDER OF PRECEDENCE**

In the event of any conflict between these general Terms and Conditions and the terms of any Purchase Order or other applicable materials, except as otherwise explicitly agreed in writing by Seller and Acromil, the order of precedence will be: (i) in the case of any Purchase Order ultimately relating to a U.S. government contract, the FAR; (ii) the

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terms of the Purchase Order or Long Term Agreement agreed upon as specified herein to the extent they are other than those set forth in these Terms and Conditions; (iii) these Terms and Conditions; (iv) project specifications; and (v) project drawings.

### **33. DISPUTE RESOLUTION**

Any dispute that arises under or is related to a Purchase Order and that relates to a matter that gives Acromil recourse against the Federal Government under the prime contract or applicable law shall be resolved in accordance with the Disputes clause of the prime contract as follows:

- (1) Seller will give Acromil a fully supported written claim concerning any such dispute within one year after the claim accrues, but in no event later than final payment under the Purchase Order, or Seller shall be barred from any remedy for such claim;
- (2) For any such claim of more than \$100,000, Seller shall submit with the claim a certification to Acromil and to the contracting officer for the prime contract that: (i) the claim is made in good faith, (ii) the supporting data are accurate and complete to the best of Seller's knowledge and belief, and (iii) the amount requested accurately reflects the contract adjustment for which Seller believes the Government is liable; furthermore, such certification shall be executed by a person duly authorized to bind Seller, and Seller shall indemnify and hold Acromil harmless from damages, judgments, costs (including reasonable attorneys' fees), and other liabilities arising from any breach of such certification of any violation of Section 5 of the Contract Disputes Act of 1978 (41 U.S.C. '604) or any violation of common law or statutory prohibitions against misrepresentations, fraud or false statements;
- (3) Seller will cooperate fully with Acromil in prosecuting any such claim and will be bound by the outcome;
- (4) Acromil and Seller will each bear their own costs of prosecuting any such claim; and
- (5) Nothing in the Purchase Order or a Purchase Order grants Seller a direct right of action under the Disputes clause of the prime contract.

Any other dispute that arises under or is related to a Purchase Order will be resolved by binding arbitration, in accordance with the American Arbitration Association.

Pending final resolution of any dispute arising under or relating to a Purchase Order, the parties will proceed with performance of the Order, and Seller's performance will be in accordance with Acromil's written instructions.

### **34. GOVERNMENT CONTRACTS**

With respect to any Purchase Order ultimately relating to a United States government contract, the Terms and Conditions found in the Federal Acquisitions Regulations ("FAR") and the Department of Defense FAR Supplement ("DFARS") shall be incorporated into these Terms and Conditions. Seller is deemed to assume the

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obligation of compliance with Executive Order 11246 and said Amendments, and unless otherwise exempt under the rules, regulations and orders of the Secretary of Labor, any Purchase Order is subject to the laws, regulations, and policies of the Equal Employment Opportunity Commission.

### **35. WAIVER AND SEVERABILITY**

The failure or delay of either party to insist on performance of any provision of these Terms and Conditions or any Purchase Order, or to exercise any right or remedy available under these Terms and Conditions or any Purchase Order, will not be construed as a waiver of that provision, right, or remedy. Furthermore, if any provision of these Terms and Conditions or any Purchase Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

### **36. INTEGRATION AND MERGER**

These Terms and Conditions together with any long term agreement referencing these Terms and Conditions and together with any Purchase Orders issued to Seller, including attachments and documents incorporated herein or therein by reference, constitute the entire agreement between Acromil and Seller, and supersede all prior representations, agreements, understandings, and communications between Acromil and Seller. No amendment or modification of a Contract, Long Term Agreement or Purchase Order will be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Acromil and Seller. The rights and remedies afforded to either party pursuant to any part or provision of these Terms and Conditions, any Long Term Agreement or any Acromil Purchase Order are in addition to any other rights and remedies afforded by any other parts or provisions of these Terms and Conditions, any Long Term Agreement, Purchase Order, by law, or otherwise.

### **QUALITY ASSURANCE CLAUSES (NOTED ON P.O.)**

#### **QC1. CLASS 1 QUALITY SYSTEM**

Supplier shall provide evidence of 3<sup>rd</sup> party registration by an accredited registrar to AS9100:2004, ISO 9001 or an equivalent quality assurance system. Supplier must have filled out an Acromil Supplier Survey/Questionnaire (Form QF-74-1Q).

#### **QC2. CLASS 2 QUALITY SYSTEM**

Acromil will approve Supplier's quality system based on:

- Acromil Supplier Survey/Questionnaire (Form QF-74-1Q) mandatory, and
- Acromil on-site assessment of Supplier's capability, or
- Evaluation of product samples, or

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- Approval based on past history supplying similar product, or
- Recommendation of other users, or
- Quality system survey.

### **QC3. NO QUALITY SYSTEM REQUIRED**

Acromil does not require that Supplier have a formal quality system to provide the product. In some cases where product quality is affected, Supplier must have filled out an Acromil Supplier Survey/Questionnaire (Form QF-74-1Q).

### **QC4. CERTIFICATE OF CONFORMANCE**

Seller shall provide with **each** shipment a certified statement that the Goods furnished on the Purchase Order meet Acromil specification requirements as stated on the Purchase Order and/or drawing(s) provided.

At a minimum, the Certificate of Conformance **must** contain the following information as it applies to the product(s) being certified:

- Part Name
- Drawing Number and revision or date
- Serial number(s), as required
- Quantity of items inspected
- Purchase Order number
- List of specifications, grade, type or value to which the product was purchased
- Seller's name and address
- Signature and title of recognized Quality Assurance representative

Acceptance of product at Acromil is contingent upon receipt of a Certificate of Conformance containing the above referenced requirements. Failure to supply certifications which comply with the above referenced requirements may result in a delay of payment.

### **QC5. GOVERNMENT SOURCE INSPECTION – MILITARY CONTRACTS**

Government Source Inspection is required prior to shipment from Supplier's facility. Upon receipt of this order, promptly notify the Government Representative who normally services your facility so that appropriate planning for Government Inspection can be accomplished.

### **QC6. ACROMIL SOURCE INSPECTION**

Acromil Quality Assurance personnel are required to inspect and buy off product submitted on the Purchase Order at Supplier's facility prior to shipment. Source inspection approval or acceptance by Acromil Quality Assurance representative shall not constitute final approval or acceptance by Acromil of the items covered by the

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Purchase Order, nor shall it relieve Seller of their responsibility to furnish acceptable product. Notify Acromil Purchasing (48) hours in advance of need for Source Inspection.

### **QC7. CHEMICAL AND PHYSICAL TEST REPORTS**

Physical and chemical test report certifications shall be supplied with each shipment. Test reports shall be legible (reproducible condition) and include Acromil's name, Purchase Order number, the material designation, specification and latest revision letter, results of all specified testing requirements, the mill heat lot number, and any other requirements specified on the Purchase Order.

### **QC8. MILL TEST REPORTS**

Physical and chemical test report originating from the producing mill shall be supplied with each shipment. Test reports shall be legible (reproducible condition) and provide traceable documentation to Acromil's name, Purchase Order number, the material designation, specification and latest revision letter, results of all specified testing requirements, the mill heat lot number, and any other requirements specified on the Purchase Order.

### **QC9. FIRST ARTICLE INSPECTION**

First Article Inspection must be inspected and accepted by Acromil Quality Assurance. A completed AS9102 Form 3 report shall be provided as evidence of 100% inspection. No production lots shall be manufactured until First Article part has been accepted by Acromil Quality Assurance. If any production lots are manufactured, it is at Supplier's risk.

### **QC10. PRODUCT QUALITY**

Goods shall be uniform in quality and condition, sound and free from foreign materials and imperfections detrimental to the usage of product. The Goods must be of an overall quality consistent with good industry practices and adhere to requested Purchase Order requirements without deviation.

### **QC11. STATISTICAL PROCESS CONTROL**

Statistical Process Control ("SPC") is required during the manufacture of the Goods for which this clause is called out. SPC shall be in accordance with a plan approved by Acromil Quality Assurance. Key Characteristics are required to meet Cpk 1.33 minimum requirements. Control charts shall be submitted with shipment.

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### **QC12. MATERIAL TRACEABILITY**

All items manufactured under the Purchase Order shall be traceable to raw materials used. Traceability and inspection records shall be available upon request by Acromil or Acromil's customer representatives. Identification of raw materials used, shall include, as applicable, but not limited to, the following types of information – lot number, material type, specification, heat lot number, etc. In any case, Supplier shall record sufficient identification information to adequately identify all material in such a manner that full traceability of raw materials used is included.

### **QC13. AGE SENSITIVE MATERIAL**

Certificate of Conformance for age sensitive materials shall contain the following as a minimum:

- Date of manufacture (cure date)
- Shelf life expiration date
- Storage conditions to achieve shelf life

Shipments with less than 80% of its total shelf life remaining when received by Acromil will not be accepted. Material Safety Data Sheets (MSDS) shall be supplied with each shipment.

### **QC14. SUBCONTRACTED SERVICES**

Requested services are to be performed by the contracted Supplier. Supplier is not permitted to flow down services to a Sub-tier without prior written approval of Acromil. If/when approved by Acromil, all Acromil requirements will be flowed down to the Sub-tier Supplier.

### **QC15. DFAR**

Seller agrees to supply material in compliance with DFARS 252.225-7014. The origin of the material shall be from a qualifying country in accordance with DFAR 225.872-1.

### **QC16. ITAR**

The Purchase Order may contain and/or reference documents containing information subject to the International Traffic in Arms Regulations (ITAR). Seller shall not export, release, or disclose this information to foreign nationals without first complying with the export license requirements of the ITAR.

### **QC17. CONFIGURATION CONTROL**

Supplier shall ensure that they have the revision of the drawing that matches the revision noted on the Purchase Order. If an item on the Purchase Order is controlled by

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a drawing that lists or references a Parts List, Supplier shall ensure that they have the revisions in effect for the date of the Purchase Order. In the event Supplier does not have the correct drawing or parts list revision, Supplier is to immediately notify the buyer listed on the Purchase Order. Supplier shall accept changes in the revision status of any of these drawings by means of a formal Purchase Change Order. Supplier shall not accept changes either verbally or via email from anyone other than the buyer. If an item on this Purchase Order invokes, via reference, a military specification, military standard, or other revision controlled document, the revisions in effect are as of the date of the Purchase Order.

### **QC18. SPECIAL PROCESS CERTIFICATION**

Each shipment shall be accompanied by legible copies of a certification containing the signature and title of an authorized representative of Supplier performing the special process. The certification shall reference the special process performed and demonstrate compliance with the drawing requirements, specifications and Purchase Order, and is performed by an Acromil, end item Customer and/or government approved sources.

### **QC19. CALIBRATION**

Supplier shall calibrate in accordance with ISO 10012-1 or an equivalent calibration system. Purchase Order Number must appear on all certifications. The actual calibration results and calibration certificate shall accompany the shipment.

### **QC20. FOD**

All requirements of Acromil Quality Work Instruction QWI-84-1 Foreign Object Damage shall be made part of this purchase order where FOD is considered a possibility by Acromil Quality Assurance.