

GENERAL TERMS AND CONDITIONS OF PURCHASE

HIMA AMERICAS INC.

1. Applicability.

This purchase order is an offer by HIMA Americas Inc. (the “**Buyer**”) for the purchase of the products specified on the face of this purchase order (the “**Products**”) from the party to whom the purchase order is addressed (the “**Seller**”) in accordance with and subject to these terms and conditions (these “**Terms**”; together with the terms and conditions on the face of the purchase order, the “**Order**”). The Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller’s acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with the Order.

These Terms apply to any repaired or replacement Products provided by Seller hereunder.

Unless otherwise expressly set forth in the applicable Order, Buyer is not obligated to any minimum purchase or future purchase obligations under the Order.

2. Acceptance. The Order is not binding on Buyer until Seller accepts the Order in writing. Buyer may withdraw the Order at any time before it is accepted by Seller.

3. Delivery Date. Seller shall deliver the Products in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If no delivery date is specified, Seller shall deliver the Products within thirty (30) days of Seller’s receipt of the Order. Time, quantity, and delivery of the Products is of the essence. Without limiting Buyer’s other rights and remedies hereunder, if Seller does not comply with any of its delivery obligations under this Agreement, Buyer may, in Buyer’s sole discretion and at Seller’s sole cost and

expense: (a) approve a revised Delivery Date, (b) require expedited or premium shipment, or (c) cancel the applicable Order pursuant to Section 19 and obtain similar products from other sources (and all such products will be deemed to have been purchased under these Terms and any applicable Order(s) for purposes of satisfying Buyer’s quantity requirements hereunder, if any).

4. Quantity. If Seller delivers more than the quantity of Products ordered, Buyer may reject all or any excess Products. Any such rejected Products shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Products and instead accepts the delivery of Products at the increased or reduced quantity, the Price for the Products shall be adjusted on a pro-rata basis. Seller shall in no event deliver to Buyer less than the quantity of Goods ordered except with Buyer’s express prior written consent, which may be withheld in Buyer’s discretion.

5. Delivery Location. All Products shall be delivered to the address specified in the Order (the “**Delivery Location**”) during Buyer’s normal business hours or as otherwise instructed by Buyer.

6. Shipping Terms. Delivery shall be made in accordance with the terms on the face of the Order. Seller shall give written notice of shipment to Buyer when the Products are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Products to Buyer within one (1) business day after Seller delivers the Products to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order. Seller shall pay all costs of carriage and insuring the Products in transit to the Delivery Location. Unless otherwise specified in the Order, the Price (defined below) includes all insurance, customs duties, packaging, and transportation costs to the Delivery Location.

7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Products to the Delivery Location. Seller bears all risk of loss or damage to the

Products until delivery of the Products to the Delivery Location.

8. **Packaging.** All Products shall be packed for shipment in accordance with applicable law and industry standards, and according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Products are delivered in undamaged condition.

9. **Amendment and Modification.** No change to the Order is binding upon Buyer unless it is in writing, specifically states that it amends the Order and is signed by an authorized representative of Buyer.

10. **Inspection and Rejection of Nonconforming Products.** Buyer has the right to inspect the Products on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are nonconforming or defective. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Products and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Buyer may replace them with products from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to Section 19. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. **Price.** The price of the Products is the price stated in the Order (the "***Price***"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

12. **Most Favored Customer.** Seller represents and warrants that the price for the Products is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Products. If Seller charges any other buyer a lower price, Seller must apply that price to all Products under the Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate the Order without liability pursuant to Section 19.

13. **Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. In the event of a payment dispute, Buyer shall deliver a written statement to Seller prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

14. **Setoff.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

15. **Warranties.** Seller warrants to Buyer that all Products will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Products by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Products with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming

Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Products to Seller and the delivery of repaired or replacement Products to Buyer.

16. **General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's subsidiaries, affiliates, successors or assigns and its/their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with Seller's negligence, willful misconduct or breach of the Order or these Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

17. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. **Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order.

19. **Termination.** Buyer may terminate the Order, in whole or in part, at any time with or without cause on thirty (30) days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Products, if Seller has not performed or complied with any of these Terms, in whole or in part. Without limiting the generality of the foregoing, if Seller fails to deliver the Products in full on the Delivery Date, or if Buyer reasonably believes that Seller is or will be unable to deliver the Products in full on the Delivery Date, Buyer may terminate the Order

immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Products on the Delivery Date. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate the Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted by Buyer prior to the termination.

20. **Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. **Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

22. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and

void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

23. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Order.

24. **No Third-Party Beneficiaries.** These Terms and the Order are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. Notwithstanding the foregoing, the parties agree that the Indemnitees shall be third-party beneficiaries with the right to enforce Sections 16 and 17.

25. **Governing Law.** All matters arising out of or relating to the Order shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

26. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to the Order shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in Houston, Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

27. **Cumulative Remedies.** The rights and remedies under the Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

28. **Severability.** If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Order or invalidate or render unenforceable such term or provision in any other jurisdiction.