



## Extrusion North America Standard Terms & Conditions of Purchase – Services

### 1. Scope.

These Standard Terms and Conditions of Purchase (“*Terms*”) shall govern, and are automatically incorporated by reference into, every PO submitted by Hydro to any supplier or any of its Affiliates (“*Supplier*”) for Supplier’s Services, and any variation to these Terms shall have no effect whatsoever unless expressly agreed to by Hydro in writing executed by one of its authorized signatories. Acceptance of any PO is expressly limited to these Terms and Hydro objects to and rejects any different or additional terms provided in response. No other terms or conditions endorsed upon, delivered with or contained in Supplier’s quotation, acknowledgement or acceptance of a PO or similar document shall form part of the parties’ Contract and are automatically voided, superseded and of no legal force or effect. Supplier waives any right which it might otherwise have to rely on any such other terms and conditions. No prior course of dealings between the parties or usage of trade shall be relevant to supplement or amend these Terms. The contract between Hydro and Supplier shall consist of: (a) Hydro’s PO; (b) these Terms; (c) Supplier’s quote (to the extent not in conflict with the PO or these Terms); and (d) any other specifications expressly accepted by Hydro in writing, as specified above (collectively, the “*Contract*”). The term “*Hydro*” refers solely to the Hydro legal entity that ultimately procures the Services.\*

### 2. Definitions.

“*Affiliate*” means any parent, subsidiary or affiliated company under common control of the relevant party.

“*Completion Date*” means the date that the Supplier is to complete the Services.

“*PO*” means a purchase order issued by Hydro for Services; POs may be issued in writing, by email or electronically through Hydro’s Enterprise Resource Planning (ERP) system.

“*Services*” means all services to be provided by Supplier pursuant to the PO.

“*Specifications*” means the documents, if any, attached or incorporated by reference into these Terms, Supplier quotation, PO or a framework supply agreement, describing the Services.

“*Start Date*” means the date set forth in the PO that the Supplier shall begin providing the Services.

### 3. Acceptance, Time of Essence & Termination.

**3.1 Acceptance of Purchase Order.** Supplier shall, within three (3) business days of receipt thereof, accept and acknowledge in writing all POs submitted by Hydro. If Hydro does not receive written acknowledgement of its POs within this timeframe, the POs are automatically deemed to be accepted.

**3.2 Time of the Essence.** Supplier acknowledges and agrees that time is of the essence of these Terms and prompt and timely

performance of the Services beginning on the Start Date, with completion on or before the Completion Date, is critical. In the event of any actual or anticipated delay, Supplier shall promptly notify Hydro of the cause thereof and the steps proposed by Supplier to minimize the delay. In addition, Supplier shall arrange all such additional resources necessary to minimize any detrimental impact on Hydro.

**3.3 Termination for Breach or Non-Performance.** Hydro reserves the right to terminate all or any part of a PO or the Contract, without liability to Supplier, if Supplier (a) repudiates or breaches any of the terms of any PO or the Contract, including, without limitation, Supplier’s representations and warranties, (b) fails to provide the Services as required by the Contract or (c) fails to make progress so as to endanger timely and proper completion of the Services by the Completion Date, and does not remedy such repudiation, breach or failure within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Hydro specifying such repudiation, breach or failure.

**3.4 Termination for Convenience.** In addition to any other rights of Hydro, Hydro may, at its option, terminate all or any part of a PO or the Contract, at any time and for any reason or no reason, by giving written notice to Supplier. Upon such termination, Hydro shall pay to Supplier the Contract price for all Services which have been completed in accordance with a PO or the Contract and not previously paid for, less the cost of any Services required to be re-performed. This shall be Supplier’s sole remedy and Hydro’s sole liability in connection with termination of a PO or the Contract for convenience.

### 4. Prices & Payment.

**4.1 Prices.** Prices and discounts for the Services shall be according to Supplier’s latest quotation accepted by Hydro and are deemed to include all labor, equipment, materials, insurance, taxes and freight charges to provide the Services. Hydro shall provide reimbursement for reasonable and necessary travel expenses so long as such amounts are pre-approved by Hydro.

**4.2 Firm Price.** Supplier guarantees that prices for Services shall remain firm during the course of its performance under the Contract.

**4.3 Payment Terms.** Supplier will invoice Hydro for the purchase price for the Services as stated in the PO after Hydro’s receipt of the Services. Unless stated in the PO or otherwise expressly agreed in writing by Hydro, invoices shall be payable ninety (90) days after the date of the invoice, shall be remitted to the billing address on the PO, and shall include the relevant PO number.

**4.4 Set-off.** Hydro shall be entitled at any time when commercially reasonable to set off any liability of Hydro to Supplier against any liability of Supplier to Hydro howsoever arising and whether any such liability is present or future, liquidated or unliquidated. Any exercise by Hydro of its rights under this Section 4.4 shall be without prejudice to any other rights and remedies available to Hydro.

\*Hydro Extrusion Canada, Inc. = Mississauga, ON; Pointe Claire (Montreal), QC; & North York (Toronto), ON

Hydro Extrusion Portland, Inc. = Portland, OR & Vancouver, WA

Hydro Extrusion USA, LLC = Belton, SC; Bensalem, PA (Alumax); Burlington, NC; City of Industry, CA; Connorsville, IN; Cressona, PA; Dallas, TX (Alumax); Delhi, LA; Elkhart, IN; Gainesville, GA; Glen Burnie, MD; Kalamazoo, MI; Magnolia, AR; Monett, MO; Moon Township, PA; Mountain Top, PA; North Liberty, IN; Phoenix, AZ; Portland, OR (Adv. Prod. Dev. & Comms. Office); Riverside, MO (Alumax); Rosemont, IL; St. Augustine, FL; Sidney, OH; Spanish Fork, UT; The Dalles, OR; Tolleson, AZ; Troy, MI; Tucker, GA (Alumax); & Yankton, SD

## **5. Representations & Warranties.**

**5.1 Warranty of Title.** Supplier represents and warrants to Hydro that, upon the delivery to Hydro of the Services, (a) Hydro shall acquire good and clear title to the Services, free and clear of all liens and encumbrances, (b) all Services, excluding any product designs which are requested by Hydro, are either owned or properly licensed by Supplier or are in the public domain and the use thereof by Hydro, its representatives, distributors, dealers end users and other direct and indirect customers, does not infringe any intellectual property or other proprietary rights of any third party, and (c) Supplier has the full right and power to enter into and to carry out the obligations under the Contract and to grant Hydro all necessary rights and licenses under the Contract.

**5.2 Additional Warranties.** Supplier represents and warrants to Hydro that: (a) it shall perform the Services using personnel of required skill, experience and qualifications and in a good and professional manner in accordance with generally and currently accepted principles and practices of the relevant profession for similar services and shall devote adequate resources to meet its obligations under the PO; (b) the Services will be in conformity in all material respects with all requirements or specifications stated in the PO or Contract; (c) the warranties set forth in Section 5 are cumulative and in addition to any other warranty provided by law or equity. These warranties survive any acceptance of or payment for the Services by Hydro.

**5.3 Compliance with Laws; HSE.** Supplier and Supplier's Services shall at all times be in compliance with all applicable laws, ordinances, codes, orders, rules and regulations, each as amended from time to time, and shall consult with Hydro prior to submitting any notices required thereby. Supplier shall engage in commercially reasonable efforts to assist Hydro in the event of any customer or government audits relating to the Services. Supplier shall have a commercially reasonable system for compliance with sound practices involving health, safety and environmental requirements, as well as quality assurance measures, suitable for the Services. Supplier shall maintain and organize all documents relating to the Services as are necessary or appropriate to evidence Supplier's compliance with the Contract. In addition, upon Hydro's request from time to time, Supplier shall promptly provide documentation supporting its compliance, as well as the correctness of any amounts included in any invoices or claims, and shall allow Hydro or its designated representatives to review, audit and copy any documentation at mutually convenient times and locations.

**5.4 Supplier Code of Conduct.** Supplier shall comply with, and actively promote within its supply chain, the principles in Hydro's Supplier Code of Conduct (available at <https://www.hydro.com/en-US/sustainability/business-integrity-and-responsible-sourcing/responsible-supply-chain/>). If Supplier becomes aware of any actual or potential non-compliance, it shall promptly notify Hydro and, as appropriate, promptly establish corrective action plans as well as provide periodic updates to Hydro until the non-compliance is fully remediated. Depending on the nature of the actual or potential non-compliance, Hydro may elect, in its sole reasonable discretion, to terminate its relationship with Supplier without penalty or liability to Hydro notwithstanding any notice and cure period including those set forth in Section 3. Hydro shall have the right to engage in reasonable actions to monitor and audit Supplier's compliance with the obligations in this Section, and Supplier shall reasonably cooperate in connection therewith. The rights and remedies in this section are not exclusive and without prejudice to any and all rights and remedies provided elsewhere in the Contract and at law or in equity.

## **6. Confidentiality; Data Privacy; Intellectual Property.**

From the issuing of the first PO and for a period of one (1) year after

the Completion Date, the parties shall not directly or indirectly, use any proprietary, confidential, or trade secret information or know-how of the other party (other than information which is in the public domain, lawfully required to be disclosed or is developed independently), including, but not limited to, information about products, financials, business or customers (collectively, "Confidential Information") for their own benefit or for the benefit of a third party, and shall not disclose such Confidential Information to any third party, other than the parties' employees or authorized contractors and named subcontractors solely on a "need to know" basis, unless: (a) the receiving party obtains the prior written consent of the disclosing party; (b) such disclosure is necessary to enforce a party's rights under the Contract; or (c) such disclosure is required by applicable law or by legal, judicial, administrative or regulatory process, provided that the receiving party, to the extent not prohibited by applicable law or the authority with jurisdiction over such process, promptly notifies the disclosing party so that it may, if it so elects, seek a protective order or other appropriate relief. "Confidential Information" shall include any reports, notes, memoranda, analyses or other information developed by the receiving party based on the disclosing party's Confidential Information, but shall not include information that: (i) has come into the public domain through no fault of the receiving party; (ii) was lawfully disclosed to the receiving party by a third party not otherwise bound by a duty of confidentiality; (iii) was independently developed by the receiving party not otherwise in breach of the Contract; or (iv) was rightfully known by the receiving party prior to entering into the Contract. Disclosure hereunder of Confidential Information is for the sole purpose of conducting business between the parties. Neither party shall utilize for any reason whatsoever Confidential Information received from the other for its own benefit, either in its own processes, or to perform, or have performed, services for hire. Personal information obtained from or on behalf of Hydro shall be treated by Supplier as Confidential Information. Further, Supplier acknowledges and agrees that Hydro collects, uses and processes personal information in accordance with Hydro's privacy policy, which is available at: [www.hydro.com/en/privacy/privacy-statement/](http://www.hydro.com/en/privacy/privacy-statement/). Any concerns regarding such collection, use or processing may be raised by submitting an email to [dataprivacyNA@hydro.com](mailto:dataprivacyNA@hydro.com). Nothing herein shall be construed to create a partnership, joint venture or any other form of entity, nor a license to use any disclosed information or transfer any intellectual property rights. All intellectual rights to any information exchanged between the parties shall remain the property of the disclosing party. Further, neither party shall have right to bind the other to any commitment or obligation. In addition, unless Supplier obtains the prior written consent of Hydro, Supplier shall not use the name, logo, service marks, trademarks or other protected property of Hydro or any of its Affiliates, or describe or identify the Services in any publicity releases, marketing materials, advertising or as any type of reference. Further, except for pre-existing software or other materials which Supplier has expressly identified as proprietary to Supplier or for which Supplier has third party authorization for use, all materials or products designed or developed by Supplier under the Contract shall be deemed to be works for hire belonging exclusively to Hydro such that Supplier shall be deemed to have forever transferred and assigned to Hydro any and all right, title and interest it may have therein. As to such identified proprietary material, Supplier grants Hydro a non-exclusive, royalty free, fully paid, perpetual, irrevocable license of such material, without right to sublicense, to make, use, sell, copy and display the same.

## **7. Indemnity & Insurance.**

**7.1 Intellectual Property Indemnity.** Supplier shall defend, indemnify and hold Hydro harmless from all costs, expenses, liabilities and claims of infringement against Hydro alleging that any of the Services infringe or violate any third party's patent,

copyright, trademark or trade secret. In such an event, Supplier, at its option and expense, shall: (a) reimburse Hydro for any costs incurred at Supplier's written request relating to such claim; and (b) pay damages and costs incurred by Hydro that are attributable to such claim (including, without limitation, court costs and reasonable attorneys' fees). In addition, Supplier shall either (i) procure for Hydro the right to continue using such Services, or (ii) replace or modify any such Services provided or to be provided to be free of the infringement provided that such replacement or modified Services materially conforms to the Specifications. If Supplier is unable to achieve either of the options set forth above despite its reasonable best efforts, it shall promptly refund to Hydro the purchase price, plus all associated costs.

**7.2 General Indemnity.** Supplier shall defend, indemnify and hold harmless Hydro, its officers, employees, representatives and agents from and against any and all losses (including, without limitation, legal costs and expenses), damages and liabilities arising from or relating to Supplier's noncompliance with any applicable laws, breach of the Contract, willful misconduct or negligence, except to the extent arising from the negligence or willful misconduct of Hydro.

**7.3 Insurance.** Supplier shall at all times maintain, at its sole cost and expense, the following policies of insurance: (a) statutory workers' compensation, including occupational disease, in accordance with applicable laws; (b) employers' liability insurance with minimum limits of \$500,000 per employee by accident/\$500,000 per employee by disease/\$500,000 policy limit by disease; (c) commercial general liability and/or umbrella/excess liability insurance providing coverage for bodily injury and property damage relating to the Services and including coverage for contractual liability providing limits of not less than \$2,000,000 per occurrence for bodily injury and property damage/\$2,000,000 per organization or per person for personal injury and advertising liability/\$2,000,000 general policy aggregate/\$2,000,000 product liability/completed operations aggregate (which policy shall be endorsed to name Hydro as an additional insured for any and all liability relating to the Services or the Contract); and (d) commercial business automobile liability insurance (including coverage for all owned, non-owned and hired vehicles) providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000. All insurance shall be with insurance companies that maintain a rating greater than A- and are at least a financial size category of VII in the most current publication of Best's Policyholder Guide. In addition, all insurance provided to Hydro shall be primary insurance and any other valid insurance for the benefit of Hydro shall be excess of such primary insurance. Supplier shall provide Hydro with duly executed certificates of insurance prior to commencement of any performance under the Contract, which certificates shall require not less than thirty (30) days' prior written notice of cancellation, non-renewal or material change in coverage. Hydro reserves the right to require other types or limits of insurance if appropriate to the Services.

**7.4 Export Licenses.** Supplier is responsible for obtaining and maintaining all export licenses required and certificates necessary for the provision and delivery of the Services.

**7.5 Survival of Rights and Obligations.** Sections 3 (Acceptance, Time of Essence & Termination), 4 (Prices & Payment), 5 (Representations & Warranties), 6 (Confidentiality, Data Privacy & Intellectual Property), 7 (Indemnity & Insurance) and 8 (Miscellaneous) shall survive for a period of two (2) years following the delivery of the Services or any earlier termination of the Contract.

## **8. Miscellaneous.**

**8.1 Amendments.** Any amendments to these Terms shall be agreed in writing by the parties.

**8.2 Notices.** Any notice under the Contract shall be in writing and shall be sent via courier service or by mail (internationally recognized overnight commercial courier, certified or registered), or by facsimile confirmed by mail to the person specified on the PO (provided that a copy is contemporaneously sent by one of the alternate means set forth in this Section 8.2). A copy of any notice to Hydro shall contemporaneously be sent to: Extrusion North America, 6250 N. River Road, Suite 5000, Rosemont, Illinois 60018, Attn.: Legal Department.

**8.3 Force Majeure.** Neither party shall be responsible to the other party for non-fulfillment or delays or additional costs in fulfillment of its obligations under any PO due to causes over which that party has no control ("*Force Majeure*"). Such causes include, without limitation, wars, hostilities between states, terrorist acts, national strikes and lock-outs, national or international transport strikes, embargoes, natural disasters, storms, fires, explosions or other similar contingencies beyond the reasonable control of a party, which leads to the inability of such party to perform its obligations under the Contract. Either party who desires to declare Force Majeure shall notify the other party in writing of the reasons for non-fulfillment or delays in fulfillment of its obligations under the Contract promptly upon the occurrence of the event, and shall propose to the other party remedies for such non-fulfillment or delays. If the Force Majeure event continues beyond thirty (30) days, either party may terminate the any PO or the Contract in writing immediately, without prejudice to any other rights or remedies it may have.

**8.4 Assignment.** Neither the Contract, nor any rights or obligations arising under any PO or the Contract, are assignable by either party without the prior written consent of the other party, except in the event such assignment is to an Affiliate of a party or in the event of a corporate merger, reorganization, consolidation or sale of substantially all of a party's assets, provided that such assignee assumes all obligations and liabilities. Subject to the foregoing, the provisions of any PO and the Contract shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.

**8.5 Subcontractors.** Supplier may only use a subcontractor to provide the Services, or parts thereof, with Hydro's separate specific prior written consent. A failure to secure such prior consent before using a subcontractor shall constitute a material breach of contract by Supplier. Supplier shall be liable for the performance, or omissions, of its subcontractors as if they were its own performance or omissions and its subcontractors shall not have privity of contract with Hydro, regardless of Hydro's consent to Supplier's use of any subcontractors.

**8.6 Remedies.** The rights and remedies set forth herein shall be in addition to all other or further rights and remedies provided in law or equity. Failure by either party to enforce any provision of the Contract will not be deemed a waiver of future enforcement of that or any other provision.

**8.7 Severability.** If anything in the Contract is deemed or declared invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect.

**8.8 Choice of Law.** The Contract or action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the state of Illinois, without regard to any conflict of law principles that would require application of another choice of law.

**8.9 Independent Contractor; Authority.** Both parties acknowledge and agree that the parties are independent contractors and neither party has the authority to bind or make any commitment on behalf of the other. Each party represents and warrants to the other that it has full right and power to enter into and to perform the obligations of the Contract.

**8.10 Lead Supplier Representative.** If indicated on the PO, all Services shall be provided by or under the direction of the individual employee of Supplier indicated, whom shall not be replaced without Hydro's prior written consent. In addition, Supplier shall replace any of its employees to whom Hydro objects based on reasonable non-discriminatory grounds.

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