



## **Additional Terms And Conditions (Collectively the “Terms”) For The Purchase Of Goods And Services**

***EnerSys de Mexico II S. de R.L. de C.V.***

***Last revised October 1, 2014***

For the purposes hereof, the term "Buyer" shall have the same meaning as such term is defined on the applicable Purchase Order (the "PO"), and the term "Supplier" shall refer to the party from whom Buyer is purchasing such goods or services.

**1. Property.** All jigs, dies, molds, equipment or other items owned by Buyer and used by Supplier hereunder, shall remain the property of Buyer, shall be kept in safe custody, shall not be removed from Supplier's facility without written consent from Buyer and shall not be used for the manufacture of products for anyone other than Buyer. All deliverables created specifically for Buyer hereunder shall be owned by Buyer and shall be considered work made for hire by Supplier for Buyer. If any such deliverable is not considered a work made for hire, Supplier shall assign, or obtain an assignment to, as applicable, all of the rights, title and interest in and to such deliverables to Buyer.

**2. Cancellation.** Buyer may cancel or terminate any PO, or any portion thereof, at any time, for any reason, including for the convenience of Buyer without being liable for any termination fee or any other penalty or charge. Enumeration of certain rights does not exclude others given by law. In the event that Buyer cancels or terminates any PO, Buyer shall pay to Supplier, as liquidated damages, an amount equal to the actual direct costs incurred by Supplier in performing under such PO up to the date of cancellation or termination less any amounts previously paid by Buyer for conforming goods or services properly performed under such PO; provided, however, that Buyer shall not be obligated to pay Supplier any costs incurred by Supplier to the extent Supplier can use or incorporate the goods, services or products for or into other purchase orders of Buyer, or for purchase orders, or for the benefit, of any other customer of Supplier.

**3. Changes.** Buyer may change the specifications, description of services, goods, or any aspect thereof or anything relating thereto prior to receiving goods from, or the completion of services to be performed by, Supplier. If such change changes the cost or time required for performance under any PO, Supplier shall promptly notify Buyer of such change and Buyer shall have fifteen (15) business days within which to withdraw its request for change or accept the new terms. If Buyer does not respond to Supplier's notice within twenty (20) business days, the request for changes shall be deemed withdrawn and Supplier shall perform such PO under its original terms.

**4. Timing.** Time is of the essence in the performance of any PO. If services are not completed or goods are not delivered by the delivery date set forth in a PO, Buyer may terminate a PO by written notice effective upon receipt by Supplier and obtain substitute services or goods elsewhere. Supplier shall promptly reimburse Buyer for any loss or increased costs, including downtime or overtime costs, incurred by Buyer as a result of obtaining such substitute goods or services.

**5. Taxes.** Supplier is solely responsible for the payment of any sales, use or other tax or duty levied or based on the price of any goods, work or services provided pursuant to any PO. If Buyer pays any such tax or duty, Supplier shall promptly reimburse Buyer therefore.

**6. Price; Warranty.** If no price is stated in any PO, Supplier shall charge the lowest prices previously quoted or charged Buyer for like goods or services in like quantities under similar conditions. Supplier warrants that the prices stated in any PO are the lowest net prices charged by Supplier to any other customer for like goods or services in like quantities under similar conditions. If such lower price is quoted within thirty (30) days after delivery to Buyer, Supplier shall promptly pay to Buyer a rebate in the amount of the difference of such amounts within ten (10) days of such lower quote.

**7. Invoice Disputes.** Buyer may dispute invoiced amounts and withhold the disputed amount while the parties try to resolve the dispute. Pending such dispute resolution, the parties shall continue to meet their other obligations under the applicable PO and any other POs from Buyer. Payment of any fees by Buyer shall not waive any rights, claims or remedies.

**8. Limitation of Liability.** Notwithstanding anything to the contrary, in no event shall Buyer's cumulative liability to Supplier for all claims, liabilities, damages and/or losses (daños y perjuicios), costs and expenses relating to a PO, or the goods or services provided thereunder, exceed the amount of the purchase price for any such goods or services in connection with the applicable PO, less any amounts already paid by Buyer for such goods or services. Buyer shall not be liable to Supplier for any lost profit, loss of business, loss of goodwill, indirect, incidental, or consequential damages or any other damages and/or losses (daños y perjuicios) that are not direct and immediate consequence of the alleged breach.

**9. Indemnification.** Supplier shall indemnify, defend and hold harmless Buyer, its shareholders, subsidiaries, affiliates, officers, directors, attorneys, employees, agents, successors and assigns from and against any and all losses, obligations, liabilities, claims, suits, judgments, damages (whether incidental, consequential, or otherwise), penalties, fines, costs and expenses (including, without limitation reasonable attorney's fees) arising out of, or in connection with (a) the violation or alleged violation of any law, ordinance, regulation, or rights of third parties by reason of performance or nonperformance by Supplier of any PO; (b) breach of any term, condition, covenant, agreement, representation or warranty by Supplier; (c) any infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property relating to the use or design of any equipment, materials, goods or services furnished by Supplier under any PO or the processes or actions employed by or on behalf of Supplier in connection with any PO; (d) injury or death to persons or any real or personal property damage, arising from or relating to the goods or services provided by Supplier under any PO or acts or omissions of Supplier or its officers, directors, employees, agents, contractors or subcontractors; or (e) claims arising from or relating to injuries to or death of Supplier's employees, including but not limited to claims based upon allegations of negligence of Buyer.

**10. Labor.** Supplier shall hold itself out to the public to be an independent contractor and not an employee, agent or representative of Buyer. Supplier is understood to act on its own behalf and at its own risk with respect to the terms of this PO. Nothing in this PO is intended to create a partnership, joint venture, franchise, agency, or employment relationship between the parties. Supplier does not have, nor shall Supplier hold itself out as having, any right, agency, power or authority to assume, create or enter into any contract or obligation (including, without limitation, any representation or warranty), either express or implied, on behalf of or, in the name of, or binding upon Buyer.

Supplier represents and warrants that is a company that, in accordance with Article 13 of the Federal Labor Law in force in Mexico, has its own sufficient resources to comply with and carry out its activities, and thus Supplier shall be solely responsible for the due compliance with each and every one of its obligations with respect to its workers, employees and sales and other similar agents, since between Buyer and the employees of Supplier there shall be no employment relationship or any similar relationship of any kind. Supplier shall indemnify and hold Buyer in peace and safe from harm with respect to any labor claims or any claims of any type filed against Buyer by the personnel of Supplier, whether by an individual or entity or any authorities, including the Social Security Institute (IMSS), the Workers National Housing Fund Institute (INFONAVIT) and the tax authorities.

**11. Rescission.** The parties agree that if Supplier breaches any of the obligations contained in or arising from this PO the Buyer will be entitled to, at its option: i) demand specific performance; or ii) terminate this PO. Said termination will operate immediately without the need of any court ruling, through a written notice informing the termination to Supplier. In both of the above cases the Buyer will be able to demand from Supplier the payment of damages and losses arising from said breach. Likewise, the Supplier will have to refund the Buyer any amount received under this PO.

**12. Insurance.** Supplier agrees to maintain commercially reasonable levels of insurance coverage, including: (1) Commercial General Liability and Errors and Omissions Insurance with a limit of not less than one million U.S. dollars (\$1,000,000) covering liability for property damage and bodily injury, including death to any person; (2) Automobile liability insurance with bodily injury and property damage limits of not less than one million U.S. dollars (\$1,000,000); and (3) "Umbrella" liability insurance in an amount not less than five million U.S. dollars (\$5,000,000) to cover claims in excess of the coverage limits provided above. If Supplier is performing any services for Buyer, Supplier agrees to also maintain: (1) Commercial Crime covering employee dishonesty in an amount of not less than one million U.S. dollars (\$1,000,000); (2) Workers' compensation insurance for Supplier's employees at the applicable statutory limit and in an amount of not less than five-hundred thousand U.S. dollars (\$500,000) per occurrence; and (3) Property insurance covering "All Risk" of loss or damage to Supplier real and personal property. Buyer shall be named as an additional insured on the Commercial General Liability, Automobile Liability and Umbrella Liability policies, and Supplier shall provide Buyer with Certificates of Insurance. If applicable, all policies of insurance shall be underwritten through insurance companies licensed to do business in the jurisdiction where the services are being provided, and with an A.M. Best rating of A- (X) or higher.

**13. Confidentiality.** Buyer, or third parties on Buyer's behalf, may disclose to Supplier, certain confidential or proprietary information ("Buyer Confidential Information"). For a period of five (5) years after termination or expiration of this PO, Supplier shall not disclose and shall, to the extent within its control, prevent the disclosure by others of the Buyer Confidential Information to any third party without the prior written consent of Buyer. Supplier agrees not to use, or make copies, of the Buyer Confidential Information except as required for the performance of its obligations under the PO, and agrees to limit access to the Buyer Confidential Information to its own employees, agents and consultants strictly on a "need to know" basis; provided, however, that such agents and consultants have executed an agreement with Supplier with confidentiality provisions at least as restrictive as those contained herein. Upon expiration or termination of this PO and if requested by Buyer, Supplier shall, to the extent possible, promptly return all of the Buyer Confidential Information. Each party acknowledges that the disclosure of confidential or proprietary information of the other may give rise to irreparable injury which may be inadequately compensable in damages. To the extent Supplier breaches, or Buyer could reasonably believe Supplier may breach, its confidentiality obligations stated herein, Supplier consents to Buyer obtaining injunctive relief to prevent, or otherwise limit the damages of, any such breach or threatened breach.

**14. Subcontractors.** Supplier may subcontract any portion of a PO to another person furnishing labor or materials to Supplier for the performance of any PO (collectively the "Subcontractors"), but Supplier shall nevertheless remain primarily liable and fully responsible for the performance of the obligations under such PO. If Supplier is subcontracting a service, Supplier must first obtain Buyer's written consent to use Subcontractors prior to subcontracting or otherwise permitting Subcontractors to perform services. No subcontract shall increase the fees or the scope or amount of expenses passed through to Buyer. Supplier shall cause its Subcontractors to, and remains fully responsible if they do not, comply with these Terms.

**15. Compliance with Law.** Supplier shall comply with all applicable laws, rules, regulations, standards and other governmental requirements in connection with the performance of its obligations under any PO including, without limitation, any Mexican laws and regulations regarding safety, hygiene, hazardous materials and environmental protection.

**16. Toxic Substances.** Upon receipt by Buyer of information which would reasonably lead to the conclusion that a chemical substance, or any other toxic substance which is the subject of any PO was manufactured, processed, transported or distributed in commerce in violation of any applicable law or regulation regarding hazardous materials or waste, Buyer may suspend or terminate such PO.

**17. Non-Discrimination.** Supplier warrants that it shall not, in performing its obligations under any PO, discriminate against any employee or applicant for employment on the basis of race, creed, color, age, sex, sexual preferences or national origin or on the basis of the employee or applicant being a disabled veteran or veteran status, in regard to a position for which the employee or applicant is qualified.

**18. Assignment.** Supplier shall not assign any of its rights or obligations under any PO without the prior written consent of Buyer. Any merger, consolidation, reorganization, recapitalization, sale of a substantial portion of Supplier's business or assets or any other transaction by which there is a change in control of Supplier's, or any of Supplier's owners' or parents', business shall be deemed an assignment by Supplier.

**19. Governing Law.** All POs and transactions contemplated thereby shall be governed by, and construed in accordance with, the domestic internal laws of the United Mexican States, without regard to its principles pertaining to the conflict of laws, and expressly excluding the application of the United Nations Convention on Contracts for the International Sale of Goods (UNCISG).

**20. Jurisdiction; Venue.** Any suit, action or other proceeding seeking to enforce, or in any way relating to, any provision of a PO shall be brought only in the competent courts of Monterrey, N.L., Mexico. Supplier irrevocably consents and submits to the jurisdiction and venue of such courts and irrevocably waives any objection which it may have to the laying of the venue of any suit, action or proceeding brought in such courts and any claim that such suit, action or proceeding brought in such courts has been brought in an inconvenient forum or that such courts lack jurisdiction.

**21. Severability.** If any provision of any PO or these Terms, or any portion thereof, is held invalid or unenforceable by any court of competent jurisdiction, the other remaining provisions will remain in full force and effect. Any provision of any PO held invalid or unenforceable only in part will remain in full force and effect to the extent not held invalid or unenforceable.

**22. Waiver.** Neither the failure nor any delay by Buyer in exercising any right, power or privilege under these Terms or any PO, will operate as a waiver of any such right, power or privilege, and no partial exercise of any such right, power or privilege will preclude further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**23. Delivery; Marking.** Unless otherwise indicated, goods described in this PO shall be delivered F.O.B. Buyer's address as set forth above. All packaging and labels must include Buyer's PO Number, Buyer's Part Number and Revision Designator, Quantity, Lot Number and Date of Shipment. Buyer may reject and return to Supplier at Supplier's sole cost and expense, any shipment which does not include the foregoing information.

**24. Acceptance of Goods.** Buyer's payment of the purchase price, or any part thereof, does not constitute acceptance of the goods or services. Goods and services are subject to inspection and rejection by Buyer within a reasonable time following receipt by Buyer, which in no event shall be less than 60 (sixty) days. Risk of loss does not pass to Buyer until acceptance of the goods or services. To the extent practicable, defective or nonconforming goods will be returned to Supplier at Supplier's sole cost and expense, and the risk of loss with respect to such defective or nonconforming goods shall never pass to Buyer and shall remain with Supplier.

**25. Warranties.** Supplier warrants that all goods, work or services furnished pursuant to this PO shall, as appropriate: (a) be new and free from defects; (b) conform to all designs, plans, specifications, responses to Request For Proposals, marketing brochures and letters, oral and written claims made by Supplier, samples and statements on containers, labels and advertisements; (c) be performed in a good, professional and workmanlike manner; (d) be merchantable, safe, fit and appropriate for Buyer's particular purpose and use; and (e) be delivered free and clear of any claims, liens or encumbrances whatsoever.